Early Critical Theory, Racket Theory, and the Arms Deal for South Africa.

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Abstract

This article attempts to construct Max Horkheimer's theory of what he perceived a "racket" to be and how the components thereof could be applied to outline a contemporary concept of racketeering. The Arms Deal in South Africa that escalated from R27 billion to in access of R70 billion, resulted in President Jacob Zuma currently facing charges on racketeering for his alleged involvement in the Deal. Despite the matter being *sub judice*, he was still re-elected in 2013 for a second term in office as President of the ANC. Corruption, as manifested in e.g. racketeering, compromises democracy; human rights, and philosophical principles - ranging from e.g. human reason; political ethics, to the seamless relationship between governing disciplines. It brings into repute; singles out a legitimacy-crisis in government; and points to a modern global false-consciousness and disregard for aspects of mass culture. Included in this article, is a section which provides the salient facts pertaining to the Arms Deal. It serves as case study for future research. Readers familiar with the general facts surrounding the Arms Deal might want to skip that section. It suggests an interpretation for Zuma's seemingly "special kind of political invulnerability."

1. Introduction

For German philosopher Immanuel Kant (1724-1804) the totality of life around us "takes place *according to rules*."[1] This apparent wisdom appears not to be applicable to those involved in racketeering practices, since racketeerists conduct their illegal activities outside any civil laws. Thus, the only probable law that racketeerists uphold, is that they do not uphold any. Arthur Schopenhauer (1788-1860) for instance, dealt extensively with the underlying manifestations of human nature.[2] We consider them

[1] Kant, I. *Introduction to Logic*, p.3.
[2] See for instance, Schopenhauer, A. *On Human Nature. Essays in Ethics and Politics*, Chapters 1 and 2.

relevant when studying the sociology of racketeering. Schopenhauer said that it is not **"**expected that he who foolishly squanders his own fortune will leave another man's intact."[3] The South African taxpayers' monies were wasted during the Arms Deal racket by the highest of officials in Government at the time.

Regardless of the numerous manifestations thereof, racketeering is no new societal evil and appears to be on the increase on a global scale.[4] In the United States for example, organized crime had been increasing since the Twenty-First Amendment's Prohibition of alcohol was undone in 1933 and continued to proliferate during the 1960s[5] and thereafter. Various studies have shown that the situation in India is alarming.[6] There has been a proliferation of crime[7] and opportunities for fraud and racketeering since the end of apartheid in South Africa. Current social evils can no longer be pinned on the legacy of apartheid. In fact,[8] although in a different, context Timberlake wrote already in the mid-1980s that "[m]any institutions are deteriorating"[9]; suggested that colonialism is not the only cause for Africa's woes,[10] and quoted Peter Enaharo that the "time has arrived for Africa to grow up."[11] Both Timberlake and Enaharo's views are pertinent to the ills that beset the Deal. Furthermore, racketeering during the Arms Deal can be characterized by a process of corporatisation[12] - the process of reorganising government's organisations in order to reflect a status of publically owned corporation. Such restructuring is usually not traded in public, and government is normally the only shareholder in such dealings.

An interesting characteristic of the politics of racketeering is that it seems as if the political elite often turn a blind eye to illegal practices in society. More appalling is

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[3] *Ibid.*, p.7.
[4] For comments on globalization, see Engelbrecht, C. "Globalization Theory and Reference to Aspects of Eastern Cape (South Africa) History." <http://africalit.nai.uu.se/exlibirs/aleph/a18> 2011, pp.1-10.
[5] *The Free Dictionary.*"Racketeering", in <legal-dictionary.thefreedictionary.com/Racketeering>.
[6] Sherman, T. C., W. Gould, and S. Ansari. "From Subjects to Citizens: Society and the Everyday State in India and Pakistan, 1947-1970" in *Modern Asian Studies,* Vol.45, (Special Issue 1), Jan. 2011, pp.1-6; Gould, W. "From Subjects to Citizens? Rationing, Refugees and the Publicity of Corruption over Independence in UP", in *Modern Asian Studies,* Vol.45, (Special Issue 1), Jan. 2011, pp.33-56; Witsoe, J. "Everyday Corruption and the Political Mediation of the Indian State. An Ethnographic Exploration of Brokers in Bihar", in *Economic and Political Weekly,* 11Feb. 2012, Vol.xlvii, No.6, pp.47-54.
[7] Standing, A. *Organised Crime. A Study From the Cape Flats,* p.(ix).
[8] About the difficulties surrounding historical facts, see Engelbrecht, C. "Limitations in History. Part 1: Problems with Historical Facts." <independent.academia.edu.christoengelbrecht/papers> 2010, pp.1-12.
[9] Timberlake, T. *Africa in Crisis. The Causes, the Cures of Environmental Bankruptcy,* p.7.
[10] *Ibid.*, p.8.
[11] *Ibid.*, p.9.
[12] Standing, A. *op. cit.*

when public servants are involved. The ultimate shame is probably when a country's President is alleged to be in the thick of things – the very same President of the government of the day (2013) that "struggled" for the achievement of freedom for "all" South Africans from their apartheid past. With the benefit of hindsight, such is at best a contradiction in terms. It is questionable if our widely hailed liberal democratic constitution provides a suitably secure framework to alleviate the internal contradictions of our current society in general and institutions of governing in particular. Freedom for all South Africans is a contradiction in terms because when citizens are financially done in by the racketeering elite, their freedom is compromised since political freedom and continued economic bondage are not mutually exclusive. Peter Kroptokin for instance, wrote in the 1920s how "society sinks through degradation and vileness into complete disintegration"[13] when the privileged commit crimes in order to maintain their privileges. In other words, these kinds of behaviours compromise the moral fibre of societies.

Today it is widely accepted in the public domain that current levels of corruption are a problematic reality in South African society, with a scope thereof never experienced before in our history. The South African media reports on a daily basis examples of how corruption, fraud and racketeering have now infested all levels of Government. The problem is so wide-spread that President Zuma referred thereto in his Presidential State of the Nation Address to Parliament on 14th February 2013. Ironically, at a time when he still faces charges of racketeering, Zuma vowed that corruption would be eradicated. Similarly, racketeering has infected entire states, even empires on a global scale, and at all levels of society. Even global sport is not excluded from this ill, varying from the widely published Lance Armstrong doping scandal in cycling, to investigations into global cricket and soccer's alleged match fixing practices – to name only a few most recent publically reported instances. On 28 April 2013 Sunday newspaper *Rapport* alleged that Transnet (a para-statel) systematically plundered the pension fund of their employees.[14]

If we were to take the proverbial step back and reflect on the current situation of corruption, then it is almost as if a "new" elite with "an alternative ethics" is developing in the world – one that accommodates and participates in illegal practices – and for our purposes, racketeering. Relevant to this, but in a different context, Van

[13] Kroptokin, P. *Anarchism. A Collection of Revolutionary Writings*, p.36.
[14] De Lange, J. "Sies, Transnet!", in *Rapport*, 28 April 2013, p.1.

Onselen, after having quoted a number of utterances by Zuma, came to the following conclusion in a recent newspaper report: "[i]f that attitude represents a general and acceptable standard, one might well ask why anyone is surprised that the Guptas could land their plane at a military base."[15] The European participation surrounding the Arms Deal, certainly underscore the international reach of racketeering practices. Therefore, given the scope of fraudulent practices, in general, but racketeering in specific, there remains an urgent need for broad-based and sustained critical discussion and research thereof. We argue that Critical Theory provides a fruitful framework for analysis since it belongs not only to the domains of philosophers and social theorists. In addition, "men of good will want to draw conclusions for political actions."[16]

At some point, we will also contend that racketeering detracts from e.g. service delivery to (in) South African society. In fact, it has been widely argued from various perspectives, that racketeering threatens the very existence of the traditional market economy and hence the South African democracy – as it has done in numerous post-colonial African states. The point is this: practising racketeering *public* servants are often exposed in public (by the traditional and social media) because as public figures when they behave illegally, they are no longer regarded as *servants* of the public. This situation ties back to our earlier view about the struggle for political freedom on the one hand, but economic exploitation of the same citizenry, on the other, is inconsistent with democratic ideals but relates well to Lenin's underlying principle of the economic essence of racketeering.[17]

The objectives of this paper are two-fold. The first is to provide a brief overview of racket theory based on an early writings of the German philosopher and sociologist, Max Horkheimer (as one of the founding members and long-time director of the Institute for Social Research at the University of Frankfurt.) The second is to establish on the basis of the first, if (and how) the principles of racket theory can be applied as a contemporary case study, to, what has commonly became known, as the Arms Deal in South Africa.

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[15] Van Onselen, G. "Business as Usual for Big Chief Zuma", in *Sunday Times,* 12 May 2013, p.17.

[16] Horkheimer, M. *Critical Theory: Selected Essays,* p.(v). For aspects of Critical Theory and South African history, see Engelbrecht C. "Traditional and Critical Theory – Any Relevance For Aspects of Eastern Cape (South Africa) History?" <independent.academia.edu.christoengelbrecht/papers> 2011, pp.1-14.

[17] Lenin, V. I. *Imperialism: The Highest Stage of Capitalism. A Popular Outline,* p.2.

A limitation of this paper is that these two clear objectives focus on different aspects of the topic and can be read as "separate" sections herein. However, only when treated together, do they "form a broad and substantial basis for the development of critical discussion."[18] In addition, beyond the scope of this paper remain nevertheless e.g. the following questions: why is it that the ANC liberation movement (as opposed to a conventional political party) fails to develop a unified struggle against corruption? Why are the tendencies toward corruption and the politics of self-interest dominant in ANC bureaucracies? How could any theory (or philosophy) of society, preserve hope for the future democratic order?[19] How, under such circumstances, can the ideals of a free and just South African democracy (for all), be sustained? Given the extent to which racketeering impose on human rights, including the ethical, political social, economic, and cultural implications of either violations or the constructions of civic society, why can racketeering not be treated as a crime against humanity?

It has previously been argued that South African history reveals many of the contemporary and societal ills found globally.[20] Accordingly, racketeering in South Africa - during and after the Arms Deal period - but specifically during the subsequent investigative processes into irregularities surrounding the Deal, simply proves the point. If it is correct that the South African society mirrors aspects of the world, then our planet of today is a sad place we live on. It is also logic that many societies around the globe, would take exception to this comparison. Consequently, it is fair to say that the phenomenon of racketeering is thus relative to both the depth in society, and geographic scope thereof. Former President, Nelson Mandela made the same point when he denounced corruption and such of the new black elite saying that "when employees of a government institution defraud it for their own enrichment; then we must admit that we are a sick society."[21]

In the recent matter between the State and Hendrik Lourens Jacob Boekhoud, The Supreme Court of Appeal of South Africa gave the following definition of "a pattern of racketeering activity: "as 'the planned, ongoing, continuous or repeated

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[18] Thompson, J. B. and D. Held. (eds.) *Habermas. Critical Debates,* p.11.

[19] Engelbrecht, C. "Limitations in History. Part II. Theory and Eastern Cape Historical Research." <independent.academia.edu.christoengelbrecht/papers> 2012, pp.1-12.

[20] Stolten, H. E. J. "History and Ideology in South Africa – The Intellectuals and the Struggle for Equality." Paper presented at Centre for the Study of Equality and Multiculturalism, University of Copenhagen (CEMES), 11 February 2011, p.1

[21] Thompson, L. *A History of South Africa,* p.280.

participation or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1, of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1. This schedule refers amongst others, to the *offences of theft and fraud*.[22]

In everyday language, we regard a racket as a fraudulent scheme perpetrated by an individual (or individuals), often in a group (or even amongst rival individuals or groups), to acquire some form of illegitimate gain. Racketeerists' gains are usually (but not exclusively) in the form of a monetary reward (or payback) for some type of "service" allegedly rendered to the racketeerist by his co-operative. Not surprisingly, there are other forms of reward/s. They vary from tangible "gifts" to promises of real career advancement, or favours of a "personal" nature. These (and other) rewards are in exchange for having delivered an inappropriate service to which the parties agreed, or at least having reached some kind of understanding. Agreements (and or understandings) between parties do not necessarily exist in a written contractual document, but often vary from a personal or telephone conversation, to an informal note scribbled on a piece of paper (or back of a cigarette box).

Whilst there are numerous perspectives from which to investigate racketeering practices, the current appalling service delivery in South Africa, is such a widely discussed topic and popular reason (cause) for protests, strikes or boycotts by the citizenry, that makes is suitable for our purposes (herein). Our view is that President Zuma and other public servants involved (implicated or convicted), simply did (and still do) not deliver on their constitutional service promises which they publically made to their respective electorates during and after their original election campaigns Instead, there is compelling evidence which suggests that the relationships they fostered, were in some instances for mutual self-gain at the expense of the electorate. In other words, the very same e.g. basic services they struggled for are now hampered by their own racketeering activities. This kind of behaviour compromises the legitimacy of political neo-ethics. It also opens up research possibilities in to election campaign promises and the extent that they were, (are) not, fulfilled.

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[22] The Supreme Court of South Africa. Judgement delivered 30 March 2011. Case No 522/10. State and Hendrik Lourens Jacob Boekhoud. <www.justice.gov.za/sca/judgements/sca_2011/sca2011_48.pdf>, p.13. (Italics added.)

We argue that there are at least two central characteristics of rackets. The first is the symbiotic relationship that exists between racketeerists and their co-operatives. The second is the generally regarded illegal business conducted as part of a larger organized crime undertaking – often, in syndicate form and clearly through a sophisticated and elaborate networking system. Whilst several variations of racketeering exist, the "protection racket" is probably the most common. Such racket seeks e.g. monetary compensation, often by extortion, for so-called "protection", against the perpetrators of racketeering, thus "protecting" them from mainly law enforcement agencies to act against them. The apparent considerations required for protection, are widely self-developed and then rationalized. Such methods are employed to perpetuate financial continuance which essentially represents the symbiotic relationship between racketeerist and co-operative.

We will show, that in the case against President Zuma, "[r]acketeering, in layman's terms, is when a seemingly legitimate company actually bases all of its business activities on corrupt methods. It is, in other words, a legitimate-looking front for illegitimate activity."[23] Naturally, for a racket to function in some form or another, many subordinate but integrated suspect schemes are usually creatively devised to portray this seemingly legitimate-looking facade to hide behind from public or other forms of close scrutiny. It is widely argued that the current about-to-be-adopted Media Bill, is developed to restrict further public investigation into e.g. the Arms Deal and other widespread fraudulent practices in South Africa. However, the seemingly moral high ground that the current SA government professes to uphold internationally is in fact compromised by neo-pariah practices. Two examples will suffice: the first is South Africa's questionable military involvement in the Central African Republic, and secondly the widely publicised "Guptagate" scandal.

When Max Horkheimer wrote his short piece on racket theory in the mid-1940s, the value of this theory for him, was that "[t]he modern concept [of a racket] contributes to describing social relationships of the past."[24] In addition, the historically ambiguous position of his concept of the racket theory, developed in no clear and final direction because Horkheimer and Adorno made textual changes *after* the original publication of their *Dialectic of Enlightenment* in 1944. For instance, the

[23] Holden, P. *The Arms Deal in Your Pocket,* pp.217-218.

[24] This is a quotation by Noer, G. S. in the Editor's Afterword "The Position of *"Dialectic of Enlightenment"* in the Development of Critical Theory", in Horkheimer, M. and T. W. Adorno. *Dialectic of Enlightenment. Philosophical Fragments,* p.236.

concept "monopoly" was later replaced by "the influential cliques," whilst the replacement of "rackets," by "the completely organised system of domination,"[25] turned out (in our view) to have had far reaching consequences for his racket theory in general. This enlarged concept of racket theory changed the way in which Horkheimer dealt with Critical Theory in future years. One such result was that the changed concept to "racket theory of domination […] went beyond the limited model of the criminal gang"[26] thus making it a useful tool for analysis in this research.

For many Europeans, the interwar years leading up to the eventual peace in the mid-1940s, was not the most optimistic period in the world and more specifically, in Europe. Against this background, Horkheimer's pessimism in the early 1940s relating to the future of socialist politics had two foundations. The first was his *economic* pessimism that stemmed from state capitalism – meaning, the questionable totalitarian economic policies of National Socialism, together with that of the Soviet Union[27] of the interwar years. Secondly, Horkheimer's *political* pessimism was based on the theory of rackets. Conceptually (and initially), racket theory simply denoted an elementary form of domination.[28] In practice however, the real nature and scope of the various forms of domination, is rather complex. In this regards, his long-standing colleague Friedrich Pollock's (an economist), contribution to racket theory, is of relevance for this paper because of his close association with Horkheimer's own development of the racket theory.

According to Pollock, there is no contradiction (or tension) in a state capitalist society's political objectives on the one hand, and its economic requirements, on the other. This is because in a command economy (as opposed to a free-market economy), the productive forces and the laws of the market, are both stripped from their respective autonomy. Thus, they are harmless because (so the argument goes) they cannot incite the masses of society against their authorities and as a result, they are of no threat to either the state in particular, or society in general. Instead, the planned economy has become inevitable, and the only remaining question is whether the outcome of a planned economy would be democratic or totalitarian in nature.[29]

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[25] Noer, G. S. "The Position of *"Dialectics of Enlightenment"* in the Development of Critical Theory", in Horkheimer, M. and T. W. Adorno. *op. cit.,* pp.240-241.
[26] *Ibid.,* p.241.
[27] Van Reijen, W. and J. Bransen. "The Disappearance of Class History in *Dialectic of Enlightenment*" in Horkheimer, M. and T. W. Adorno. *op. cit.,* p.249.
[28] Noer, G. S. *op. cit.,* p.233.
[29] *Ibid.*

This means that the new ruling class (a new elite) that emerges from a planned economy, with all the state powers at its disposal, controls both economic and political life in society. Nevertheless, and not surprisingly, we find rackets existing in both systems – be they democratic or authoritarian in nature.

It was against this background, that Horkheimer formulated his racket theory. This formulation remained provisional, as he never developed it further in any detail. For Horkheimer, the essence of racket theory is that economic monopolies are the result of uneven economic exchange present in every-day life. Uneven economic exchanges change social power into direct forms of domination – often even by means of force, if it need to.[30] Thus: the relationship between the racketeering clique and its constituency (clientele) is based "on the principle of protection in exchange for obedience"[31] – that is, toeing the proverbial line. For our purposes, and simplistically stated, subservience (by the co-operative) to a master (racketeerist) would also be an appropriate description of this relationship. It approaches the issue from a different perspective. Such relationship between uneven exchange on the one hand, and protection on the other, perpetuates the continued existence of rackets on a semi-sustained basis, because it appears that rackets do not generally seem to have a long life-cycle. Instead, their longevity seems to be of short or medium term nature. The reasons therefore, do not form part of this study.

According to Van Onselen, "[y]ou cannot argue that South Africans do not take corruption seriously. It is the primary diet on which the media feeds, so we are acutely aware of just how pervasive it is. Nor can you say the opposition does not give it due guard – it remains a central focus of the collective politics. Civil society too, places enormous emphasis on corruption and its eradication."[32]

2. The nature and scope of Horkheimer's racket theory

Horkheimer's incomplete concept of racket theory can be summarized as follows: over time, humankind organised themselves into groups in the form of e.g. cliques, councils, boards or committees. They do this in order to manage the affairs of their fellow humans in their immediate communities, or society at large. These groups were

[30] *Ibid.*
[31] *Ibid.*, p.235.
[32] Van Onselen, G. *op. cit.*

formed to *represent* society in one form or another and to *serve* the interests of their respective constituencies.[33] However, when the interests of the members of such constituencies were replaced by those with some form of power in order to rather preserve and advance their own interests, then Horkheimer described such (individuals, groups, cliques, etc.) as rackets.[34]

The *origin* of Horkheimer's racket theory grew from discussions amongst fellow members of the Frankfurt School at the Institute for Social Research during the early 1920s and continued deep into the 1930s. Their attempts centred on developing the applicability of Marxist theory to the prevailing conditions of their interwar (mainly German) society. It was a time of disillusionment with worker's movements that failed, as well as the proletarian revolution as predicted by Marx, was not forthcoming.

As a result, the *starting point* for the development of a racket theory was the analysis of their current (immediate) society. Such society was seen as a conglomerate of organised groups under the leadership of bureaucratic or quasi-bureaucratic elites.[35] Whilst Horkheimer and Pollock were the main proponents of the theory, Franz Neumann (political scientist) and Otto Kirchheimer (political scientist) neither agreed with the political and economic basis of the theory, nor with the concept of state capitalism as contained therein. Despite these differences, and although Horkheimer's piece on racket theory was not immediately published – (apparently as a result of the criticism which it originally attracted), he nevertheless continued to fundamentally adhere to the tenets of the original thesis. Adorno's contribution to the theory of a racket, on the other hand, was never published. In addition, because the early formulations of the theory were never further developed by Horkheimer and Pollock, the economic and political arguments that were put forward at the time, remained at best rudimentary as we found them in *Dialectics of Enlightenment.*[36]

From the beginning, the attempts of early critical theorists at the Institute for Social Research, were to go further than a mere contemporary cultural criticism of society against the backdrop of a critique of political economy.[37] At least two points can be raised here. Firstly, the (any) criticism must be "real," and secondly, such

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[33] In South Africa we refer to government officials as public *servants*, in the positive sense of the word.
[34] Noerr, G. S. *op. cit.*, p.233.
[35] *Ibid.*, p.235.
[36] *Ibid.*, p.237.
[37] *Ibid.*, p.234.

should *not only* take place against the framework of existing objections to political economy – but, in other words, there were *other* factors to be considered as well. This means that political economics alone, they argued, were too restrictive as an explanatory model. This was clearly shown in the role of the workers' organisations and how the class struggle developed under conditions of monopoly capitalism as a system of transactions between monopolistic and ever-competing racket units.[38]

The *aims* of racket theory were to develop a theory of power as well as its associated power relationships. The prevailing uneven conditions in society, at the time of Horkheimer's writing, could not be limited to previous explanatory models such as e.g. "the rule of liberalism regulated by market laws."[39] As a result we find the attempts by the Frankfurt School to develop a more comprehensive theory to explain society in terms of power and the associated relations to power. One such relation was that of human domination over others, and nature.[40]

The *sociology* of racket theory can be explained against the background of the existing networks of relationships that we find within (and amongst) groups, or amongst individuals of a racket. These relationships centred mostly on the leader/s of a clique (group) and its subordinates (clientele/constituency) whom the former are supposed to serve. This mutual relationship is based (at least in theory) on the principle of protection in exchange for reciprocal obedience. In other words, loyalist obedience (subservience) to the leader/s of a racket, ensures protection not only for the individual, but also for e.g. his family members and friends, or even their business interests, should they have any.

The reality is that the traditional ideologies ensuring that specific interests appear universally, also disappear when the individual rackets no longer pursue (or even pretend to pursue) the intellectual or other objectives that relate to their society as a whole. In other words: traditional ideologies and specific interests both disappear since the one is a result of the other. They are replaced by the blatant pragmatic objectives of manipulation and the preservation of self-serving power[41] of the racket

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[38] *Ibid.,* p.237.
[39] *Ibid.,* p.234.
[40] Engelbrecht, C. "Max Horkheimer and Environmental History. A Case for the Greater Kowie Region (Eastern Cape, South Africa.)" <independent.academia.edu.christoengelbrecht/papers> 2013, pp.1-15; Engelbrecht, C. "Marx and Engels on "Nature." Early Beginnings of Elements of Environmental History?" <independent.academia.edu.christoengelbrecht/papers> 2013, pp.1-9; Engelbrecht, C. "The Kowie History Museum and Historical Research." <independent.academia.edu.christoengelbrecht/papers> 2013, pp.1-8.
[41] Noerr, G. S. *op. cit.,* p.235.

and/or its leader/s. It is through these newly acquired power relations (and position/s), that their ability exists to exert the objectives of the racket onto others in society. Such power influence can e.g. decide who is selected and what careers the dominant (key) personnel within the racket[42] will have. In exchange for this, all that is required from a subordinate racket's member is obedience to the racket's master/s, either as an individual, a group member, or as an entire group. The subservient co-operative can then expect due "protection" (at least, in theory) in exchange for their loyal obedience. Later in this study, the symbiotic relationship between master and subordinate, will receive more attention when we discuss the issues that pertain to the Arms Deal.

With the racket's privileged power elite in place, and at the top of the racket's organisational structure, "the generalizable theory of relations of class and domination"[43] continues. Two characteristics stand out under such circumstances of monopolism and total domination: firstly, the permanence of the oppression, and secondly, the parasitic nature thereof. Those who perpetuate monopolism in the racket, live off the benefits that the oppression of their subservient clientele, has to offer. This is hardly surprising, because by definition "[e]very ruling class has always been monopolistic"[44] and domineering at the expense of those in society who are excluded from the fruits of their labour in society. It is questionable if numerically speaking they actually (the power elite) represent the majority of the citizenry of society at any particular time. Instead, it appears to be a class issue.

Since society is hierarchically layered,[45] the structure of competing rackets corresponds with the theory of class relations of domination. At the top of bourgeoisie society, are the oppressive capitalists (or the ruling class). Within the racket, is the domineering power elite – also being exploitive and self-serving by nature. At the next level (or below the oppressive capitalists and power elite), is the racket's obedient oppressed who are "protected" (and in most instances arbitrarily selected for a privileged position) – which in essence, reflects the reality in capitalist society. However, this is more complicated than reducing these relationships to simply the "haves" and "have not's."

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[42] *Ibid.,* p.236.
[43] *Ibid.*
[44] *Ibid.*
[45] See for instance, Giddens, A. *The Class Structure of the Advanced Societies.*

Because of the relative dominant power relations that exist between the racket's elite and its clientele, they cunningly change the useful social functions that they were supposed to perform on behalf of their clientele, into tools (weapons) of domination. This manipulation serves the attainment of their own good. So considered, they "turned their backs" not only against the oppressed masses (their clientele), but also against the competing groups within their own class.[46] Selfish, exploitive gains remain their sole objective. Consequently, and the behaviour of the rulers towards the ruled, corresponds with the structure of the racket theory. This phenomenon is characteristic "of all human relationships"[47] – including the working class as expressed by the worker's aristocracy. It indicates the vertical and horizontal patterns of oppressive and competing racket relationships that exist within capital, as well as within labour.

There are however, clear differences and similarities between a racket in the capital environment and one that exists in the labour environment. A racket within the environment of capital, benefits the whole class; but a racket within the environment of labour, benefits only the racket's elite and its worker-aristocracy – in other words, in the latter instance, entire masses in society are excluded from material gain.

The first similarity between different types of rackets is that the labouring masses simply "have to pay for the whole system."[48] The masses are only seen as objects and were attributed (or attract) no further use-value.[49] The second similarity is that from a historical perspective, the concept of the racket can equally be applied to large and small enterprises. This is not something new. Thirdly, both types of rackets compete for the largest possible portion in the added value chain. Furthermore, large corporations and small business enterprises, operate amongst the lowest strata of society, either in or outside the legal system, in order to advance their own material interests. A further similarity is that regardless of the type of racket, and irrespective of its functioning in either large or small organisations, both can serve political or scientific purposes.[50] This fits Horkheimer's view that racket theory goes further than the narrow concept of a criminal gang – instead, it has a much wider scope and influence in society.

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[46] Noer, G. S. *op. cit.*, p.236.
[47] *Ibid.*
[48] *Ibid.*
[49] Horkheimer made the same point earlier regarding the relative position of the German workers. See Horkheimer, M. *Dawn & Decline. Notes 1926-1931 and 1950-1969*, pp.61-65.
[50] Noerr, G. S. *op. cit.*

One view is that the ultimate goal of political *praxis* along critical theoretical thinking is to achieve a racket-less society. Such would be a just and classless one, with no domination and or any form of barbarism. The second goal of political *praxis* is to define the idea of democracy. Current human freedom and democracy are mere mythological experiences and not representative of the true ideals of democracy. However, viewed in scientific terms, the true sociology of a racket is to help to development a more appropriate philosophy of history[51] than is currently known to humankind. Such "appropriate" philosophy of history is radically different from mainstream convictions. It has practical intent.

The *application* of racket theory was found in two areas. The first is the transfer of traditional class antagonisms to the sphere of international relations. Here, our analysis of the Arms Deal seems an appropriate case study. The second area of application is the transfer of antagonisms within different classes themselves. But, the theory holds that in post-liberal capitalism, new forms of conflict conceal the basic contradictions that exist between capital and labour.[52] The result is that the "true" contradictions in society are never exposed. But within state capitalism this situation is different. Any economic crises that might have existed are now mitigated by new mechanisms to do so. These new mechanisms are of political nature, and thus, erode the economic bases (influences) in society. In other words, there is a change from economic cohesion in society, to a political one that is dominated by the state and its associated organs. The difference is this: in capitalist society, market forces determine the economic life, whilst in a state capitalistic society, the political is the dominant force in society. In such state capitalist system, extreme state intervention varies from "soft" intervention, e.g. welfare legislation, to open acts of "terror."[53] This means the transformation from one production force to another, and in this process, creates a set of "new" social production relations – *viz.* a "new ruling class"[54] that emerges from these circumstances.

At this point, Noerr arrived at what he termed the *"primacy of politics"* as he found it in Horkheimer. From the above, one can see that the entire society is dominated by politics: e.g. international relations; those with capital; labour, and amongst and in classes, etc. Politics does not only affect the dominated classes, but

[51] *Ibid.*
[52] *Ibid.,* p.234.
[53] *Ibid.*
[54] Van Reijen, W. and J. Bransen. *op. cit.,* p.249.

also the political agents – that is, the very creators of political life[55] – even at the individual level, are affected.

Horkheimer explained the dominant position of politics, along three lines. Firstly, the alleged "rediscovered" politics that goes as far back as the days of the Renaissance was a theoretical advance only – it was a myth. Secondly, in times of monopoly (read totalitarianism), the political was an even bigger ideological category, than during thirdly, liberalism's laws of the market era.[56]

The influence of the primacy of politics became so comprehensive in everyday life, that the "dominated masses attribute world events to politics"[57] – thus considering everything in life as being political. Their entire existence is interpreted in terms of the political. For instance: they hear the appeals of the political; they hear about the new political laws (decrees) that govern their every-day lives; the masses (ordinary people) hear about the lives of the powerful in society/political life – where facts count, and where there is no place (need) for theory.[58] It is a society in which ordinary citizens live in, and under, the spell of the political – one in which "individuality vanishes."[59] In Horkheimer's philosophy however, the individual always remained central in his thinking.

The *experiences of the political by the masses* stem from the direct consequences of the political actions that govern their daily lives. These experiences are of every-day nature, e.g. the effects of negotiations between rackets; if emergency aid was distributed (albeit unevenly) in society; when living costs rise (of e.g. food prices), or the effects of getting a new job. Frankly, the masses viewed the consequences of economic policies as fate – sort of in the same way when they experienced the Great Depression of the late 1920s early 1930s – almost in an atmosphere of that they can simply do nothing about their circumstances in itself. The protagonists of rackets had the same view; they knew they were in charge - in the same manner as entrepreneurs that misconstrued their business ventures as simply the basis for so-called economic freedom. The same were Horkheimer's views about presidents of unions, or governments, who abused their relative positions at the expense of the lower classes of society.

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[55] Noer, G. S. *op. cit.*
[56] *Ibid.*
[57] *Ibid.*
[58] *Ibid.*
[59] Marx, K. and F. Engels. *The Communist Manifesto,* p.237.

Confronted with the economic realities of racket theory and politics, these presidents too, are now forced to buy and sell (to exchange) goods and services in order to maintain their positions and thus cannot escape the power politics/relationships in the reproductions of society. As a result, the logic of the market gives a false sense of freedom in the same manner, since entrepreneurs are now forced by their own individual self-assertion, to secure their own interests through the exchange mechanism. In reality they were not free; they compete with other rackets (large and small), in an out of government and amongst themselves. Today, lager groups are up-and-coming; from large privately-owned capitalists, to entire governments. By nature, governments are essentially sheer "executive mechanisms" and at best, can "merely feel their concrete effects"[60] and at worst, not understand it.

How does the *primacy of politics* function in the state capitalist system? Firstly, because politics is the dominant force in society, such political dominance undermines the socialist idea of a planned economy. Secondly, in a planned economy, and based on rational decisions, the socialist ideal was supposed to replace the anarchy (destructiveness) of private capitalist accumulation. Lastly, it is envisaged that this replacement would be in the general interest of the entire society.

Instead, what one finds under fascist conditions (especially in its brutal form), is what is characteristic of democratic state capitalism and of Soviet bureaucratic socialism, *viz.* the end of legal, liberal agencies that can mediate in both societies. These agencies have lost their legality because of the ever-present power politics of the competing ruling cliques in government, and or society at large, or even amongst themselves. It is these groups (read rackets) that take over the necessary planning of the required process, irrespective of whether that process is still democratically legitimate, or whether it is already characterized as openly planned and organized piracy[61] – meaning the stripping of society.

3. Contemporary comments about modern rackets

Rackets, racketeering and racketeerists are, as we have proposed, nothing new. In one form or another, they have been in existence from before the founding of the modern

[60] Noer, G. S. *op. cit.*, p.235.
[61] *Ibid.*

state. For instance, Machiavelli's (1469-1527) *The Prince* dealt with the relationship between the prince and those who want to inappropriately carry favour with him. He warned those princes involved with less than desirable subjects and their unlawful objectives, and who were no longer acting in the interest of the public good, to seek alternative behaviour.

Our discussion thus far, has taken us to the point where we can state that the domain of racketeering is that of the illegal economy, meaning that part of the "normal" economy that does not form part of the national income accounts and recorded in GNP/GDP statistics. The illegal economy is also referred to as the underground economy, black market economy, shadow economy informal economy or parallel economy.[62]

Theoretically, the illegal economy is subdivided in to the following major components: illegal activities, e.g. drug trafficking, smuggling, illicit logging, trading of conserved species, human trafficking, prostitution and illegal gambling; tax evasion; income derived from corruption both in government and private sectors; informal sector activities which are not captured in the official statistics and not covered by taxation; and lastly, household work carried out by family members but not included in the value-added economy.

Some characteristics of rackets include e.g. a high level of profitability; the involvement of powerful figures in politics and all levels of state bureaucracy; that it creates employment; but has negative effect on economy.[63] Lastly, racketeering has a negative impact on the moral fibre of society.[64] We concede, for the purpose of this paper, that the theoretical subdivisions of an illegal economy (above) and the characteristics of a racket are not exhaustive and that the literature is burdened with a wide range of different approaches to both. A comprehensive study of such, we left, fell outside the scope of this paper's objectives. Similarly, we did not consider an in-depth etymological investigation into the term racket necessary.

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[62] Phongpaichit, P. "Thailand's Illegal Economy and Public Policy." Seminar paper delivered at the Centre of Southeast Asian Studies, Kyoto University, Japan, Nov.1999, p.2.

[63] *Ibid.*, pp.2-3.

[64] SAPA. "Malema Charged with Racketeering." <www.iol.co.za/news/crime-courts/malema-charged- with-racketeering/> 30 Nov. 2102. Charges of racketeering were added to Malema's initial charge of money laundering. The case was postponed to 23 April 2013.

The link between the "normal" economy and the illegal economy is seamless since the illegal economy's racketeering activities often take place within legitimate business operation but it serves as a front to cover for illegal racketeering practices.[65]

Rackets are the invention of some form of domination that originates from an uneven exchange environment – usually, in the form of exchange of commodities. Over time, the division of labour; the rise of classes; and the modern state, all contributed to change rackets fundamentally. The result is the emergence of a racket as a form of a social movement that relies on certain identity claims.[66] In a sense, rackets portray elements of groupness.

The modern narrow legalistic definitions of rackets,[67] originate from the state because it is the state that makes the definitions rendering rackets to be illegal organisations that are allegedly established for profit, extortion, protection and fraud. The smaller rackets lead an unstable and precarious existence that is normally sort lived. The precariousness is found in the reality that such rackets members lived "tortured lives" because of the real exploitive treatment that they are subjected to, and their inability to escape such "handcuffed" position. The problem is that in some countries, and in some instances, certain rackets e.g. drug cartels, become a dominant factor in society and within the official state structures. This gives them their relative size and influence in the hands of their masters.

But inside a racket, life is not always rosy. Whilst the racket endeavours to secure its continued existence, it needs to be relatively content with disruptions, internal dissention, splits, and face competition from other rivals. They experience unresolved internal political divergences, personal factionalism and competition for power positions in the hierarchy of their particular racket – sometimes simultaneously occurring in more than one racket.

Paradoxically, the survival of rackets relate closely to internal factionalism and external rivals. The leader/s use scapegoating to strengthen his/her controlling position/s and reinforces such by constant purges. Expulsion, even killing, is at the order of the day. In this sense, the "actual relationship is always tainted with failure"[68]

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[65] Available at <www.wisegeek.com/what-is-racketeering.htm>

[66] Butler, J., E. Laclau and S. Žižek. "Introduction", in Butler, J., E. Laclau and S. Žižek. *Contingency, Hegemony, Universality. Contemporary Dialogues on the Left,* p.1.

[67] Legal Information institute. "18 USC – 1961 – Definitions", in <www/law.cornell.edu/uscode/text/18/1961> Acts or threats involving murder and kidnapping are included in racketeering.

[68] Žižek, S. "Holding the Place" in Butler, J. *et. al., op. cit.* p.309.

for some. The sustainability of rackets depends on their understanding that relative cohesion and self-control of its (dubious) resources necessary ensure its survival. It lacks a significant and visible system of ideological justification for its *modus operandi*. The result is that rackets' leaders quickly learn that they need to negotiate and tolerate others by co-existing in, and co-operation with, the existing state structures. In such symbiotic circumstances, national mediation organs alter their operative environment drastically. Per definition, some rackets continue to remain a state model in the sense that they derive their *raison d'être* from state deficiencies as well as from state structures. Not surprisingly, political rackets aspire towards sources of state domination and allied resources. We believe that such was typical of the Arms Deal.

When a new recruit enters a racket, s/he is convinced that his/her involvement in a racket will give meaning to history and s/he does so euphorically in the hope to help the racket's cause amongst like-minded members. There is a strong association with the "zealotry of the members"[69] and at first a recruit is mostly unaware that s/he will be required to give up a substantial part of personal individuality and discretionary time. Similarly, there is a lack of understanding that his/her alienation will stem from the myth about the community of the racket. In a sense, the recruit will break with aspects of his/her known society and at some point experiences delusion in and outside the racket. Inside the racket we find denial about real perceptions of what is actually going on inside. Outside the racket, we find the acceptance of a dominated position because critical thinking was suspended. In both instances there is a high level of rationalisation to justify their thinking and actions.

When we apply Horkheimer's expanded concept of racket, being no longer only limited to the criminal gang, we find the emergence of a new class of neo-bourgeois engaged in mental or near-mental occupations in society. They are often described as intellectual workers, privileged employees of capital, or a new middle class comprising of office workers, teachers, professionals, technicians, commercial and financial experts, journalists, writers, politicians, and information technology specialists – educated and semi-educated, trade unionists and other propertyless individuals, who can now make a living without having to conduct lower menial

[69] Palinorc, F. "Rackets." <http://www.left-dis.nl/uk/rackets.htm>

forms of work. They are, in a sense, a new upper-middle class, with "new wants"[70] and demands. Often there is a move away from achieving such not by the ballot box but by the brick.[71] This implies that racketeering does not only operate within the higher echelons of society.

A further form of racketeering intersects with the current employment practices in South Africa in so-called attempts to normalise our society. The origin is affirmative action. In essence the objective of affirmative actions in its original form, are sound but the misappropriation thereof lead to neo-racketeering. On face value, affirmative appointments gave the impression that over time, such appointees will be able to stand on their own with productive outputs as expected and measured against. Instead, affirmative action gave rise to the appointment of historically disadvantaged in order to reflect the demographic composition of our society but this facade covered for favouritism, lack of training and progress and the pretention of "…but I am doing my job." The reality is different. In exchange for high prolife jobs with appropriate remuneration, despite experience, qualification, aptitude etc, support is given and protection offered between the parties.

This situation is characterized by declining productivity rates, increased participation in racketeering practices and declining service delivery. Financial deterioration of economic activity is often replaced by increased taxes to be reallocated to the previously advantaged. The problem simply remains a racial and often a tribal one. If the historically advantaged (read Whites) is replaced by a historically disadvantaged (read disenfranchised Blacks) and outputs do not meet the requirements and then criticized, mainly by the former, official reaction is often to brand whites as racist and still living in the "old South Africa" or not supporting transformation. Under such circumstances the "closing of the lager" on both sides does not resolve the problem and the racketeering practices are perpetuated. In most instances, the more than double costing of the racketeering practice, is not quantified or at best justified by neo-racketeering logic/reason.

In all respects, this form of racketeering is empirically measureable against the previously outlined definitions of racketeering. Methodologically, such research is in its infancy and not nearly indicating a clear road ahead nor can one realistically expect

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[70] Marx K. and F. Engels. *op. cit.,* p.223.

[71] Booysen, S. "Beyond the Ballot and the Brick: Continuous Duel Repertoires in the Politics of Attaining Service Delivery in South Africa?", in Mc Lennan, A. and B. Munslow. (eds.) *The Politics of Service Delivery,* p.104.

a coherent or unified approach for analysis. Conceptually, no final word is nearly in sight, and sadly, nor has the final racial slur been made. The differences between apparent and real societal cohesion, remains unattended to in the public domain.

4. The South African Arms Deal racket

4.1 Prelude

After the collapse of the Soviet Union in 1989 and the Fall of the Berlin Wall, the international general military threat perception was replaced by a widespread feeling of attained peace. As a result, existing civil-military relations were to undergo profound changes. The realignment of civil-military relations represented fundamental shifts in future military missions – away from traditional territorial defence philosophies and practices, towards multinational peacekeeping and humanitarian missions.[72] In this respect, South Africa was no longer removed from her former isolated status during the apartheid era. In fact, since 1994 South Africa played a leading role in African events as well as in global forums. This is in stark contrast to the country's former isolated position from international relations.[73]

By the early 1990s, the South African defence disciplines needed serious revamping as the cumulative effects of decades of arms boycotts against the country, have taken its toll. For instance, the South African Navy faced budget reductions from 15% of total state expenditure, to 9% by 1992. As a result, a program of rationalization made 2,000 sailors redundant. Maritime strike craft, e.g. large frigates were scheduled to be withdrawn from active service by 2000. In addition, the *SAS President Pretorius* was sunk after having been stripped of useful parts, and *SAS Rijger* sold to a Hout Bay tour operator (in Cape Town) for only R13,500. The plan was that by 2005, three submarines were to be decommissioned. Therefore, and as a result of budget constraints, the plan to build four corvettes was scrapped in August 1991, and in 1992, Chief of the Navy, Vice-Admiral Lambert Woodburne, resigned. The following year however, a Parliamentary Floor Committee investigated e.g. maritime policy. It recommended that the Navy be closed and all existing equipment

[72] Burchard, T. H. *From Apartheid to Democracy. The Civil-military Relations in the Republic of South Africa*. M. A. Thesis. Naval Post Graduate School, pp.1-6.
[73] See for instance Geldenhuys, D. *The Diplomacy of Isolation. South African Foreign Policy Making.*

be transferred to a national coast guard (that did not exist). In addition, the proposed acquirements of four new corvettes would be too costly, and South Africa's new international position, did not pose any threats to the country.[74]

Vice-Admiral Robert Simpson-Anderson succeeded Woodburn as head of the Navy and soon the international armaments industry lobbied for support for a revamped South African navy – their intensions were to sell a comprehensive set of naval hardware to the South African government. In March 1993, Simpson-Anderson announced the Navy's intention to acquire four new corvettes. Immediately most major international suppliers solicited prospective naval business opportunities in South Africa - e.g. British Prime Minister John Major visited South Africa in September 1994 to lobby potential contracts on behalf of 10 Downing Street. The point is this: the ANC-government's first material acquisitions were weapons, not an equivalent investment in low-cost housing or any basic human needs so often promised in pre-1994 political campaigns. By mid-1995, tenders were reduced to two potential suppliers: from Spain, the Bazan shipyard, and from Scotland, the Yarrow shipyard.

Domestic criticism for the proposed procurements came from e.g. ANC's future Chief Whip and Chairman of Parliament's Joint Standing Committee on Defence, Tony Yengeni; William Gumede; South African Students Congress; Jay Naidoo (Minister without Portfolio); Trevor Manual (Minister of Finance); Cosatu, and national mainstream media[75] at large. But for Government, ANC's Ronnie Kasrils, lobbied widely in favour of the Arms Deal. In fact, on a much wider scale, the defence industry supported a wide program of armaments acquisitions based on the principles of offsets (or counter-trade) that were inherent in the deals. Per definition "offsets are agreements on the part of arms suppliers to invest money in the South African economy in return for receiving tenders."[76] For instance, Managing Director of Armscor, Tielman de Waal, explained that the Arms Deal would result in a net inflow of R2 billion for the country. Similarly, Kris Naidoo, corporate communications director, also at Armscor, explained how the deal would boost the RDP through counter-trade inherent to the corvette deal.[77] More optimistic projections were that offsets would result between R3,0 billion and R7,6 billion, and that 25,000

[74] Holden, P. *op. cit.*, pp.3-4.
[75] *Ibid.*, pp.5-7.
[76] *Ibid.*, p.8
[77] *Ibid.*, p.9.

jobs would be created and 10,000 houses built as a result of the British tender through the Yarrow shipyard.[78] In addition, one of the Spanish Bazan offset options was to fund a fleet of hake fishing boats.[79] In reality, the "counter trade aspect has added a new dimension to foreign acquisition,"[80] it was argued.

Gradually, government took fuller control of the Arms Deal. Thabo Mbeki recently became Deputy President, and allegedly told German Foreign Minister in 1995 that "the race is still open."[81] In fact, the tendering process thus far, was amended to provide opportunities for alternative bidders to re-enter the bidding process. The final decision on the purchase of the corvettes vested with Cabinet. However, the entire deal was scrapped in June 1995 because of public opposition, but more specifically, because of the uncoordinated process so far. Rather, South Africa would only re-consider buying arms after a Defence Review has been completed that outlined the rigorous defence policy for future years[82] to be followed. This study will highlight that in reality, little was adhered to in terms of a so-called "rigorous defence policy."

In order to take the arms procurement forward, a Defence White Paper was presented to Parliament in 1996. This was followed by a final Defence Review, which was presented in different stages to Cabinet and Parliament in 1997 and 1998, respectively. The White Paper pointed out that although there was no military threat to the country, South Africa still needed to be militarily prepared[83] by having to retain a "core force."[84] The Defence Review argued in detail that the core-force concept needed staff cuts but that the defence weaponry be modernised in order for the country to play an effective role as regional peacekeeper on the African continent. In line with this, the Defence Review finally proposed the procurement of 4 corvettes, 4 submarines, 4 maritime helicopters, 28 fighter planes, 40 utility helicopters and 54 battle tanks.[85] This "shopping list" was far more elaborate than the initial plan ever intended a few years earlier. The final purchases are itemized in the following section.

Despite differences between Kasrils and Modise who lobbied Mbeki in May 1997, (a month before the Defence Review as submitted to Cabinet), and Trevor Manual,

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[78] *Ibid.,* p.8.
[79] *Ibid.,* p.9.
[80] *Ibid.*
[81] *Ibid.*
[82] *Ibid.,* p.10.
[83] *Ibid.*
[84] *Ibid.,* p.11.
[85] *Ibid.*

who was reluctant to support the purchases, Cabinet approved the first phase of the Defence Review on 18 June 1997. Then Parliament approved it two months later - in August 1997.[86] Mbeki, who was part of the sub-committee tasked with the acquisitions, announced that invitations to tender would be released towards the end of 1997 with the aim to procure R12 billion worth of defence equipment.[87]

Thus: this process so far took about six years, and already at the time cost the country R1 billion just in expenses incurred by the South African government relating to the procurement process. In any rational terms, already then, there were early indications that cost controls were always going to be challenging – even ignored at times, and that meta-defence considerations were to be found paramount in the Arms Deal.

4.2 The first purchases

Stolten is correct when he wrote at the beginning of this century that "[s]ince 1994, South African has gone through different phases in an attempt to create a new historical dynamic driven by the aspiration of equal rights and better living conditions"[88] for all South Africans. One of the attempts by the ANC government, was to turn South Africa into a developmental state – similar to those of East Asia – often described as "one of the greatest industrialisation transformations of the modern era."[89] Unfortunately, Stolten did not elaborate on the failures of such and the current disillusionment with democracy that is widely debated in South Africa.

Once the Defence Review approved the first phase, the Cabinet sub-committee on acquisitions, decided on what military hardware to buy. Thabo Mbeki headed the committee that also comprised of Alex Erwin (Minister of Trade and Industry), Trevor Manuel (Minister of Finance), Stella Sigcau (Minister of Public Enterprise) and Joe Modise (Minister of Defence). After the subcommittee finalised their assessment and referred their findings to the Arms Acquisition Council, the Acquisition Plan "is the mandatory document that indicates a commitment to acquire

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[86] *Ibid.*
[87] *Ibid.*, pp.12-13.
[88] Stolten, Stolten. H. E. 2004. "Historians in the new South Africa: exposing conflicts or promoting reconciliation." Paper presented at the conference at SOAS/Institute of Commonwealth Studies. *Looking at South Africa 10 years on.* University of London, 10-12 September 2004, p.1.
[89] Gumede, W. M. "Delivering the Democratic Developmental State in South Africa", in Mc Lellan, A. and B. Munslow. *op. cit.*, p.43.

the product" and "thus commits the budget of the Department of Defence to a particular expenditure."[90] Joe Modise promised an ethical outcome of the procurement process, and in November 1998 a firm figure of R30 billion, instead of previous estimates of between R12 billion and R15 billion, was made public by Thabo Mbeki. By 3 December 1999, the government signed the final purchasing agreements and Finance Minister Trevor Manuel, signed the loan agreements and that would finance the purchases.[91] In essence, the purchases can be summarised as follows:

Equipment	**Quantity**	**Contractor/supplier**	**Price in R million (1999)**
Corvettes (The Meko A200)	4	German Frigate Consortium (Germany) Thomson-CSF (France) African Defence Systems (South Africa)	R 6,917
Submarines (The Class 209 1400 MOD)	3	German Submarine Consortium (Germany)	R 5,354
Light Fighter Aircraft (The Gripen)	28	SAAB British Aerospace (British-Swedish Consortium, UK/Sweden)	R 15,722
Lead-in Fighter Trainers Aircraft (The Hawk)	24	British Aerospace (UK)	
Light Utility Helicopter (The Agusta A 109M)	30	Agusta (Italy)	R 1,949
		TOTAL	R 29,992

(Source: P. Holden. *The Arms Deal in your Pocket*, p.18.)

[90] Holden, P. *op. cit.*, pp.16-17.
[91] *Ibid.*, p.17.

In his last budget speech (six months before the Arm Deal was signed), Joe Modise said South Africa would gain between R104 billion and R110 billion through foreign direct investment and industrial participation programs from the tendering governments. In addition 65,000 jobs were to be created in South Africa. Government consistently argued that the anticipated gains from offsets were proof of the sensibility of the Deal[92] and rationalized such. It also argued that this would go a long way to alleviate the chronic unemployment in South Africa. However, the fact remains that offsets are a controversial way of engaging in trade and are usually prohibited by the World Trade Organisation (WTO). The reality is that the amounts of offsets were merely included in the purchase price and that the penalties arms suppliers would face in case of default, amounted to merely 10% of the purchase price. More concerning is that frankly speaking, they are in reality, unenforceable.[93] Crawford-Browne repeatedly warned Defense Review hearings that offsets are notoriously corrupt and that they seldom materialize[94] (Crawford-Browne 2010) thus do not benefit those they were intended for.

This precarious position was exposed when The Standing Committee on Public Accounts (Scopa) found out in October 2000, that suppliers did not have to keep to their offset promises. This committee, led by Gavin Woods (of the IFP), Andrew Feinstein and Laloo Chiba (both members of the ANC), conducted an investigation into the Deal. They questioned Chippy Shaik (chief of acquisitions for the Department of Defence) and Jayendra Naidoo (chief negotiator for the government). Soon, in the same hearing, Kasrils downplayed the importance of offsets in the Deal.[95] In addition, public insight to the detail of the offsets was disallowed, and the offsets were also not independently audited. In September 2006, new Minister of Defence, Mosiuoa Lekota admitted that only 13 000 of the 65 000 promised jobs were created. By 2003/4 when the suppliers were to have met certain offset targets, Ferrostaal defaulted by R4 billion, BAe/SAAB by R840 million, and Thales by R262 million.[96]

By 2003 the cost of the Deal had escalated to R52.3 billion (excluding financing costs.) When questioned about the apparent lack of disclosure about this, Shaik put

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[92] *Ibid.*, p.21.
[93] *Ibid.*, p.23.
[94] Crawford-Browne, "The Arms Deal." (Letter to SCOPA chairman Themba Godi). <http://www.ifisa.org/The_Arms_Deal.html.> 2010.
[95] Holden, P. *op. cit.*, pp.23-24.
[96] *Ibid.*, pp.24-25.

the responsibility in the court of the Department of Finance. The argument that Government was not fully aware about the cost escalations did not hold, as a thorough Affordability Report was presented to the Cabinet beforehand. Regardless, Joe Modise initialled the purchasing contracts for the three submarines *before* the Affordability Report was presented. The net result was that "the arms we bought don't suit our needs" - the Meko frigates were not necessary in regional peacekeeping projects; the SAAF planned to drastically reduce the use of the Gripens and Hawks because of a lack of need, and there was a strong possibility that two of the three submarines would be mothballed as the Navy could not afford to attract enough skilled staff necessary to operate them.[97]

In June 2010, and although in a different context, President Jacob Zuma said in Mumbai that "South Africa is open for business"[98] – but then, such was the case since 1992 regarding the Arms Deal. Being "open for business" clearly meant different things to different people.

4.3 How not to reveal

In November 1998, Deputy Auditor-General, Shauket Fakie, wrote to Government and requested permission to investigate the Deal. Fakie received no reply. But with the approval of Henry Kleuver (Head of Auditor-General's Office), he wrote to the office of Thabo Mbeki in May and August 1999, respectively. Since the matter was referred to the Department of Defence, Fakie wrote to Minister of Defence, Mosiuoa Lekota, for a meeting to discuss the issue.[99] In other words, the Arms Deal became investigated even before the final contracts were signed.

But eleven days before Fakie wrote to Lekota, PAC MP Patricia de Lille, announced to Parliament that she was in possession of a 10-page document signed by concerned ANC MPs about the offsets of the Deal and possible corruption by prominent politicians. Amongst those implied, were Chippy Shaik, Jayendra Naidoo and Tony Yengeni. In public, Lekota dismissed De Lille, but in private, agreed to the AG investigation. The problem is that a few days later Thabo Mbeki (head of the

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[97] *Ibid.,* pp.26-31.
[98] Landsberg, C. *The Diplomacy of Transformation. South African Foreign Policy and Statecraft,* p.218.
[99] Holden, P. *op. cit.,* pp.37-38.

Cabinet sub-committee) intervened. Fakie required approval from all relevant ministers to get his terms of reference approved for the investigation.[100] The investigation was "steered" (or lead into a predetermined direction) by an "audit steering committee" comprising of members of the Auditor-General's Office, members of the original Arms Deal sub-committee, including Chippy Shaik, and Vanan Pillay. The latter was later fired for having accepted a R55 000 discount on a luxury Mercedes-Benz family vehicle sold by one of the Arms Deal contenders.

Fakie's first official report into the Arms Deal was released on 15 August 2000. It only dealt with primary contracts[101] and raised serious concerns about the entire Deal. The report argued e.g. that the acquisition of the Hawks did not meet standard acquisition regulations. The point is: government has decided to buy the Hawks irrespective of cost and technical requirements and without regard to due process. This was a marked deviation from the originally agreed to value system[102] as was previously promised. Secondly, the issue of offsets were severely criticized on the basis that it undermined the previously agreed to counter-trade undertakings – a cornerstone of the initial motivations in favour of the Deal. Lastly, the report clearly outlined the conflict of interest amongst major decision makers *cum* beneficiaries.[103]

Whilst Fakie's investigation was in progress, the following agencies also became involved from an investigative perspective: the Special Investigating Unit, headed by Judge Willem Heath; the Office for Serious Economic Offenders (which later became the Directorate of Special Operations, also known as the Scorpions) and Selby Baqwa, as head of the Public Protector's Office.[104]

The Standing Committee on Public Accounts (henceforth Scopa) immediately decided that the Deal sould be further investigated once they read Fakie's report. At first Zuma seemed supportive of an investigation, but Tony Yengeni opposed any public hearing. Naidoo and Chippy Shaik admitted that offsets were unlikely to happen and that the costs have escalated to R43.6 billion. The public hearing also had to deal with the conflict of interest, since Chippy Shaik's brother, Schabir, who was the representative for African Defence Systems (ADS), would benefit from having to supply the information systems for the combat suite of the corvettes. The problem

[100] *Ibid.*, p.39.
[101] *Ibid.*, pp.40, 42.
[102] *Ibid.*, pp.40-41.
[103] *Ibid.*, p.41.
[104] *Ibid.*, pp.42-43.

with the conflict of interest was that at first Chippy Shaik, denied that he did not recuse himself from meetings where such were discussed, but in later investigations, confessed.

ADS won the contract, since the opposing supplier's price has been increased by R40 million to a level that made it uncompetitive. Such information of C^2I^2 was given to ADS who could then formulate a more competitive price[105] despite a Navy 15-point report that motivated why C^2I^2's product was from the outset the preferred supplier. Consequently, Scopa was convinced of underhandedness in the allocation of the contract to ADS, and that Chippy Shaik's testimony was misleading. They drafted the so-called 14th Report and argued for an expert forensic investigation. Parliament passed it unanimously,[106] but a week later, the cover-up began. On 12th January 2001, ministers Modise, Manuel and Radebe, held a press conference at Johannesburg International Airport and slated the findings of Scopa and the Auditor-General.

So, for government, both Scopa and SIU were threats in uncovering the truths of the Arms Deal – the plan was quite simple: remove both from their respective offices. On 19 January 2001, Thabo Mbeki wrote Judge Heath (Special Investigation Unit) a letter refusing his application to partake in the investigation.[107] The situation was intolerable, firstly, since the Cabinet sub-committee has "steered" the Auditor-General's initial investigation into the Arms Deal. Secondly, Mbeki's refusal for Heath's SIU's involvement in the investigation, compromised the separation of government powers.

On 19th January 2001, Gavin Woods received a letter from Jacob Zuma accusing Scopa of being unfairly biased against the government.[108] Feinstein was removed from his possition as chairperson of the ANC Study Group and he resigned on 23 August 2001 from Parliament. The ANC henceforth used their majority in the Study Group to manipulate the proceedings and investigative direction - Woods resigned in February 2002. The point is this: Scopa lost its independence from party politics through a process of deliberate political interference from Thabo Mbeki down the hierarchy to ministers and lesser political elite. The military industry complex served the interests of highest ranking politicians and their business associates and not the interests of the State, or the citizens.

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[105] *Ibid.*, pp.44-45.
[106] *Ibid.*, pp.46-47.
[107] *Ibid.*, pp.48-50.
[108] *Ibid.*, p.55.

The result was that only the following agencies were left to continue with the investigation: the National Prosecuting Authority (under Bulelani Ngcuka); the Public Prosecutor (under Selby Baqwa); and the Auditor-General (under Shauket Fakie). More than a year and a 400-pages report later, the findings of the investigation were a farce. The following are some reasons: firstly, we have already dealt with Chippy Shaik above. Secondly, Minister of Defence, Joe Modise, was directly involved in the selection of the Hawk from British Aerospace over the cheaper but technically more proficient Italian Aeromacci plane. At the end, the Hawk was chosen because of British Aerospace's better offsets. A further problem with Modise's disposition relates to the fact that he acquired shares in Colong – the company that had been selected by British Aerospace as one of its companies that had to deliver on its industrial participation programme[109] even before the contract was awarded. Thirdly, the Auditor-General himself, behaved highly questionable. Richard Young filed a legal application in 2003 with the Auditor-General under the Promotion of Access to Information Act. Fakie was then ordered to hand over all the documents, but in fact only provided some. When, finally, he had to hand them or face contempt of court, it became clear that the Joint Investigation Report was extensively edited. It found, *inter alia*, that there was no improper or unlawful conduct by government.[110] In the final instance, the government claimed it could not be held accountable for any corruption" with regards to the allocation of sub-contracts as it was not directly involved in such.[111] This was factually incorrect because French contracting company, Thomson, bought 50% share in ADS before the contract was awarded.[112]

4.4 Tony Yengeni and the Minister of Defence

During the period of the arms procurement, Yengeni held two influential positions that could have enabled him to influence the outcome of purchasing decisions, and also later, the investigation into his alleged improper conduct. Firstly, Yengeni was Chairman of the Joint Standing Committee on Defence, and secondly, he was also Chief Whip of the ANC. The Joint Standing Committee on Defence acted as Parliament's oversight body that *inter alia,* assisted the Department of Defence in the

[109] *Ibid.*, pp.59-63.
[110] *Ibid.*, pp.64-65.
[111] *Ibid.*, p.62.
[112] *Ibid.*, p.66.

acquisition process of military equipment. The Chief Whip's job was to "police" ANC politicians working in Parliament. But eventually, who would guard the guardians?

In his first position, Yengeni became friendly with Michael Woertel, representative of DASA, who's job it was to market the products of Daimler-Benz-Aerospace AG in South Africa. Daimler-Benz was a potential supplier to the Arms Deal. In March 1998 Yengeni travelled to Chile and Brazil to view the Daimler-Benz assembly plant and on his return in October 1998, took delivery of a luxury Mercedes 4x4 ML 320 Auto for himself at a 47% "staff discount."[113] Three years later, in October 2001, Yengeni was charged with fraud, perjury, forgery and corruption. He admitted guilt and resigned his position as Chief Whip. After years of legal wrangling, in August 2006, the Bloemfontein Supreme Court of Appeal rejected Yengeni's legal appeal and ordered him to report to Pollsmoor Prison within 72 hours. However, four months later, Mbeki issued a presidential pardon effectively benefitting Yengeni who has only served four months of his four year sentence.[114] In December 2007, Jacob Zuma was elected as ANC leader over Thabu Mbeki, and a month later, Yengeni became member of the ANC National Working Committee.[115] Yengeni was now again fully in the Zuma camp.

Minister of Defence, Modise, continuously intervened in the tendering and evaluation processes to ensure a favourable outcome for BAe. His conflict of interest stems from his association with Conlog. This company specializes in electricity meters and vending devices for the South African domestic and export markets. It was alleged that BAe was to buy shares for Modise in this venture, and by the time of Modise's retirement (in late 1999) he was publically appointed as a director of the company in charge of marketing. The Public Service Accountability Monitor reported that Modise's unethical conflict of interest thus stems from his financial benefits out of deals made whilst he was a member of Cabinet.[116]

There was a further area of concern. Modise was Honorary Life President of the MK Military Veterans Association. A month before Modise coined his "visionary approach" in the acquisition of the Hawks, BAe pledged a R4,5 million donation to the Association. This would be done through a company, Airborne Trust, founded by

[113] *Ibid.*, pp.71-73.
[114] *Ibid.*, p.85.
[115] *Ibid.*, p.86.
[116] *Ibid.*, p.107.

Basil Hersov and chaired by Richard Carter. The money was to be used to fund the development of an industrial/agri-business park and training centre near Orange Farm. The project had in mind to train some 20 000 former MK soldiers for their reintegration into civil society.[117] This payment had a clear pro-political connection, and when Modise died on 26 November 2001, the matter was not investigated.

But there were two further potentially questionable sets of interests in the BAe deal. A British organisation, similar to the Scorpions, the British Serious Fraud Office, offered the South African government assistance in or about mid-2006, in the investigations into the BAe deals. The investigations revealed a complex network of agents and intermediaries, but in particular Fana Hlongwane – advisor to Joe Modise during the Arms Deal process. The SFO claimed proof that in 2005 there was an agreement to pay Hlongwane $8 million as a settlement figure for work done in relation to the Gripen project.[118]

The second set of questionable interests pertains to Basil Hersov and Richard Carter (mentioned above). The SFO alleged that Hersov received R77 million as commissions for his role played in assisting the BAe deals. Carter, as the former chair of BAe Systems South Africa, according to the SFO, received R27 million as commissions as the company's registered South African agent. This was just one of the many payments totalling R350 million to the company of which Carter was the sole beneficiary. He died in 2004 during a canoeing accident on the Orange River.[119] The British government however, claimed that these payments were done in the normal conduct of business.

4.6 ANC-comrades turn on each other

It was normal racketeering practice for ex-comrades to frame their opponents in their desperate efforts of ensuring self-gain and to manipulate methods of self-protection during (and after) the Arms Deal process. A month before the Joint Investigation Team presented their report to Parliament, the Scorpions raided a number of properties in France, Mauritius and in South Africa, the offices of Schabir Sheik, and

[117] *Ibid.*
[118] *Ibid.*, p.109.
[119] *Ibid.*, pp.109-110.

his company, Nkobi. Amongst the documents seized, were confidential Cabinet minutes relating to the Arms Deal.

When the Joint Investigation Team presented their report to Parliament in November 2001, it undertook swift action against those implicated in improper activities. Consequently, Schabir Shaik was arrested on 16 November 2001 and charged with theft of documents, as well as a further offence under the Protection of Information Act. In May 2002, Shaik was brought before court to testify and it showed that he was in possession of minutes that related to a meeting about the acquisition of the submarines in May 1999 at which his brother "Chippy", Jayenda Naidoo, Thabo Mbeki and Alex Erwin were present. Secondly, it was alleged that he was in possession of confidential Cabinet documents and correspondence between the Department of Defence and the Department of Trade and Industry. However, Schabir Shaik's defence team argued that the documents were inadmissible[120] in his trial. In response, the Sate asked for postponement in order to add to the existing charges laid against Shaik.

During this period the political environment changed – none of it, to Shaik's advantage. In fact, four things happened. During those years (as is the case today), Black Empowerment was the "in thing" (meaning the "politically correct thing" to do) in Government and black business in South Africa. Firstly in November 2002, the *Mail & Guardian* newspaper published a story that Jacob Zuma apparently solicited a R500 000 per annum bribe from Thomson-CSF of France. This French company won the contract to supply the combat suites for the newly acquired corvettes, and included as their black empowerment partner, Shaik's company, Nkobi.

Secondly, and less than a year later, Schabir Shaik made admissions to the Scorpions during an interview that pointed to his likely charge of corruption. The following day, on 31 July 2003 newspaper reports announced that former Minister of Transport, Mac Maharaj, was being investigated for a number of payments totalling R500 000 into his account by one of Shaik's firms. The inference is this: Shaik paid Maharaj in order for Nkobi Holdings to secure a portion of a R265 million contract relating to the supply of bar-coded driver's licences in South Africa. In anticipation to the outcome of the investigation, Maharaj resigned a month later from First Rand and they in turn, cleared him in a report published on 14 August 2003 from any

[120] *Ibid.*, p.116.

wrongdoing. Maharaj received a R1 million settlement from First Rand. The NPA however, refused to clear Maharaj.[121] In August 2011, Maharaj re-appeared in public life – this time as President Jacob Zuma's spokesperson and liaison with the press, to improve Zuma's failing public image. By the end of 2013, Zuma's public standing was probably at an all-time low.

In the third instance, Bulelani Ngcuka, the National Director of Public Prosecutions, made a statement on 23 August 2003 that "detailed the investigation that had taken place into Jacob Zuma and his financial advisor."[122] Schabir Shaik would be charged for corruption, fraud, theft of company assets, tax evasion, and reckless trading. The Nkobi group of companies and Thomson CSF would also be prosecuted. The problem was that although there were sufficient *prima facie* evidence for corruption against Deputy President Jacob Zuma, it was unlikely that such constituted a winnable trial.[123]

Fourthly, on 6 September 2003, the weekly newspaper *City Press* published an article that opened the debate if Bulelani Ngcuka, National Directorate of Public Prosecutions, was not in fact an apartheid spy under the codename RS452. This article was based on documents leaked to *City Press* by a senior investigative journalist and sourced from the National Intelligence Agency's database. The web of connections stacking up against Ngcuka was as follows: these documents were seemingly written and compiled as part of the ANC-in-exile's operation "Bible Project." This operation was an ANC undertaking to determine who might have been apartheid spies. Jacob Zuma was in charge of this in Lusaka. Mo Shaik (brother of Chippy and Schabir) who wrote this report in conjunction with Operation Vula operatives, fingered Ngcuka, was in charge of ANC intelligence structures in South Africa.[124] This meant that Ngcuka, who investigated a Shaik brother (Schabir), Deputy President Jocob Zuma and Maharaj, would henceforth have to contend with their respective political influences – individually, and or collectively.

The general response against Ngcuka's critics was as follows: why now, when he is investigating them all, (all involved in corruption charges) is he made out to be a spy? The situation was in reality a farce. President Mbeki appointed the Hefer Commission of Enquiry to investigate the allegations against Ngcuka. It started

[121] *Ibid.*, p.117.
[122] *Ibid.*, pp.117-118.
[123] *Ibid.*, p.118.
[124] *Ibid.*, pp.118-119.

proceedings on 16 October 2003 in the form of a number of public hearings. Soon, a former Eastern Cape human rights lawyer, Vanessa Brereton, admitted that in fact, she was Agent RS452.[125] After intense probing, Shaik eventually admitted that the analysis against Ngcuka "may have been faulty."[126] Consequently, when on 20 January 2004 Hefer presented his findings, Ngcuka was cleared of being a spy. Judge Hefer referred to "a small number of distrustful individuals" who generated suspicion against him and was based on "ill-founded references and groundless assumptions."[127]

Again Zuma interfered in due process. As a result of Ngcuka's previous statement about the availability of *prima facie* evidence, Zuma now filed a complaint with the Public Protector's Office headed by Lawrence Mushwana. Zuma argued that Ngcuka's investigation was in bad faith as well as to discredit his character. Mushwana's investigation took five months and he presented his findings to Parliament in May 2004. His report claimed *inter alia,* that Ngcuka's findings unjustifiably infringed Zuma's constitutional rights.[128]

The reality was that Parliament now sat with two sets of investigative results: that of the Hefer Commission, and that of Mushwana. The result was that Parliament agreed to a 17-member *ad hoc* committee to deal with Mushwana's findings. Again the problem of lack of impartiality surfaced. Zuma chaired the committee that now included ANC politicians and in June 2004 a compromise decision was reached – Mushwana's report was 'noted' but not 'accepted' – this despite the fact that Minister of Justice, Penuell Maduna, concluded that Parliament was simply lied to.[129] Ngcuka resigned the following month.

The network of conflict amongst these ANC-members, lead to abuse of political power through an intricate web of securing own interests at all costs – even to the extent that constitutional autonomy was not spared – in fact such was compromised by the very elite that fought for it, but now faced the very same constitutional laws of the country. The principles of racketeering were practiced in the following ways: first there were the original spy charges that turned out to be a farce. Secondly, Zuma appoints an investigation but he chaired the committees. These party committees he

[125] *Ibid.*, p.121.
[126] *Ibid.*, p.125.
[127] *Ibid.*
[128] *Ibid.*, p.126.
[129] *Ibid.*, pp.127-129.

packed with his allies[130] thus making a mockery of the investigation and the committees. The *prima facie* evidence was dismissed and the grounds for Zuma's complaints were later confirmed by the very same person who investigated the alleged non-existence of the evidence. Furthermore, both Ncguka and NPA's findings were overridden by government, the very institutions which government appointed in the first place to protect good governance. Lastly, the same happened to the Hefer Commission's findings that were overridden once they reflected badly on Government.

4.7 A brother and comrade, Shabir Shaik – guilty on three counts

A racket, according to our understanding of racket theory, is rarely orchestrated by an individual alone – so, to charge Schabir Shaik, would inevitably lead to Deputy President comrade Jacob Zuma. We will deal with the latter in the following section.

When Shaik was charged for a second time, on 23 August 2003 at the Durban Regional Court, such were on three separate counts along with 10 of the companies he represented. Firstly, he was charged with corruption relative to a general pattern of corrupt behaviour between himself and Jacob Zuma. According to this charge, Shaik made different payments to Zuma to which he was not legally entitled. The intention of these payments was to influence Zuma to behave in such a manner that would be beneficial to Shaik and his companies.[131] Zuma's inappropriate assistance to Shaik's business activities was congruent with actions in access of his constitutional powers and neglect of his duties. Zuma was member of the Kwa-Zulu-Natal legislature, Deputy President of South Africa, Leader of the Government in Parliament and member of the Cabinet. Secondly, the payment he received from Shaik, made no legitimate business sense. The payments were interest free, were recorded as assets and not liabilities, the necessary documentation were carelessly completed, and Zuma at no stage, could afford its repayment.[132] Lastly, the state proved that Shaik directly used his connection/s with Zuma to benefit his Nkobi group of companies, as well as the French company, Thomson-CSF. For our purposes, this can be summarized as follows: Nkobi and Thomson-CSF both had a number of subsidiaries in South Africa,

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[130] Timberg, C. "'99 Arms Deal returns to haunt S. Africa's top leaders", in *Washington Post,* 2 January 2008. <http://www.washingtonpost.com/wp-dyn/cont>

[131] Holden, P. *op. cit.,* p.134.

[132] *Ibid.,* p.137.

but stripped to its bare essentials, they were joint venture partners. However, because of disagreements between Nkobi and Thomson-CSF, Zuma, the state testified, was "a mediator to resolve the dispute" to the extent that Nkobi Investments received 10% shares of Thomson in ADS.[133] In conclusion: Shaik paid (amounts that he could hardly afford) to Zuma, and Zuma mediated to the extent that Shaik became a partner in Thomson-CSF in the German Frigate Consortium that won the corvette deal.

The second count of corruption, related to a bribe that Shaik arranged for Zuma with the intention to influence Zuma to benefit Shaik's business interests.[134] The purpose of this cover in this paper, is to show the seamless relationship between "political and material privileges"[135] present in racketeering.

When it became clear that the Arms Deal was most likely to be thoroughly investigated, Schabir Shaik met with Alain Thetard on 30 September 1999 in Durban. The purpose of the meeting was for Shaik to ask Thetard to arrange a bribe of R500 000 per year for Zuma until such time that dividends were paid out in 2001. This was in exchange for Zuma's protection during the current and future investigations. Secondly, Shaik solicited Zuma's support for future projects of Thomson in South Africa. Zuma confirmed his agreement in an encrypted code and consequently Thetard informed Thomson-CSF head offices in France and Mauritius about the agreed arrangement.[136] The R500,000 bribe was hidden from the public through an agreement between Nkobi and Thomson-CSF International (France) in terms of a service agreement between the two companies. The sate found that in fact there was little by way of any service provided by Thomson-CSF that justified such amount.[137] Nevertheless, the payment ended up as part of Zuma's assets because the payments were made though Development Africa – one of businessman Reddy's companies – Reddy was paying for the development Zuma's Nkandla rural village. Lastly, Zuma wrote to Gavin Woods of Scopa attempting to prevent Scopa from investigating the Arms Deal[138] racket.

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[133] *Ibid.*, p.140.
[134] *Ibid.*, p.141.
[135] Greenberg, S. B. "Ideological Struggles Within the South African State", in Marks, S. and S. Trapido (eds). *The Politics of Race, Class and Nationalism in Twentieth Century South Africa,* p.389.
[136] Holden, P. *op. cit.,* p.142.
[137] *Ibid.*, p.143.
[138] *Ibid.*, p.145.

The third count, Shaik had to face, was one of fraud. This comprised of unlawful book entries and that part of an amount of R1,2 million written off on 28 February 1999, was made up of payment/s relating to Zuma's debt. Such debt write-off was entered as a development cost for Prodiba and was contra generally accepted accounting procedures.[139]

Judge Hillary Squires presided over Schabir Shaik's trail that started on 14 October 2004 in the Durban High Court and ended on 4 May 2005. The state presented some 40 witnesses and found Shaik not a credible witness – one that would "resort to duplicity or falsehood to gain one's ends"[140]; one who had deliberately lied to Mandela; and one "whose performance as a witness was not exactly brilliant"[141] - either in content of evidence, or the manner in which Shaik presented it. For our purposes, the immorality of the lie cannot be accepted as liberal means of communication.[142]

On the first count of corruption of having a corrupt relationship with Zuma, Squires explained how Zuma intervened to assist Shaik's business interests – that Shaik could turn to Zuma for help and how Zuma was willing to give it.[143] This corrupt relationship was referred to by Judge Squires as a "mutually beneficial symbiosis."[144] Shaik was found guilty on all three charges and was sentenced to 15 years in jail – 15 years for count 1; 3 years for count 2 and 15 years for count 3. These sentences would be served concurrently. Lastly, the state seized all Shaik's assets corruptly acquired – in access of R30 million.[145]

As could be expected, Shaik's defence appealed – first to the Supreme Court of Appeal that heard his case in September 2006. The verdict delivered on 6 November 2006 was unanimous and upheld the sentences of Judge Squires. Finally, Shaik took the matter in 2007 to the Constitutional Court – again without success, when it ruled in May 2008, against Shaik.

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[139] *Ibid.*, p.146.
[140] *Ibid.*, p.162.
[141] *Ibid.*, p.163.
[142] Adorno, T. *Minima Moralia. Reflections From a Damaged Life*, p.30.
[143] Holden, P. *op. cit.*, pp.164-165.
[144] *Ibid.*, p.174.
[145] *Ibid.*, p.193.

4.8 Racketeering of the highest order – Jacob Zuma

Zuma was charged twice. Two weeks after Zuma's financial advisor Shabir Shaik was found guilty of corruption, President Thabo Mbeki fired Deputy President Zuma ''in the interest of the Honourable Deputy President, the Government, our young democratic system, and our country."[146] Ironically, that was after allegations that Mbeki also took bribes during the Arms Deal. Secondly, and despite the above grave circumstance, Mbeki referred to Zuma as ''honourable." Furthermore, to say this "was in the interest of ..." whilst Government was already compromised by numerous of its executives, is to speak with fork tong. Then, only two weeks later, Zuma was charged for the first time for having a "generally corrupt" relationship with Shaik.

In this case, Zuma was the first accused; Thint Holding (previously known as Thomson-CSF Holding), was the second accused, and Thint Pty (previously known as Thomson Pty), was the third accused. Both Thint Holding and Thint Pty were represented by Jean-Pierre Robert Moynot, who was also a director for both companies, be it at different times.

On count 1, Zuma was charged with ''general corruption." This was based on him having accepted payments that made no legitimate business sense to the value of R1,2 million. These payments only made sense relative to Nkobi's survival with the assistance of Zuma. Furthermore, Shaik's undetermined benefits were intended as bribes. The benefits to Zuma, could not have been obtained commercially. Likewise, Shaik's services as financial advisor, was a further benefit for Zuma and as such violated his terms of office specifically when he agreed to, and confirmed, the bribes he arranged[147] and then received.

On 18th August 2005, the Scorpions executed a number of raids on the Johannesburg and Nkandla homes of Zuma and seized a total of 93 000 documents from 22 different sites. Zuma's legal team argued that these raids were illegal. In two instances, both Judge Ismail Hussain and Judge Joel Hurt ruled in favour of Zuma. The NPA appealed and the Supreme Court of Appeal found on 8 November 2007, the raids legal, but Zuma and Thint's legal teams took the matters to the Constitutional Court. But about eight weeks before the Court was to deliver its verdict, it became known that Judge President of the Cape High Court, Judge John Hlophe,

[146] *Ibid.*, p.183.
[147] *Ibid.*, pp.185-188.

inappropriately tried to influence two separate judges with the intention to influence them for a favourable ruling for Zuma.[148] Arguments of "political conspiracy" entered to oust him from politics,[149] but after Judge Msimang ruled on 20th September 2006, in favour of Zuma, the case was truck from the roll.[150] Again, political interference was at the order of the day. In our view, this confirms the principle of the "primacy of politics."

At face value, it appeared as if justice would not prevail – but, Judge Msimang ruled that "the State could recharge Zuma whenever it wanted, albeit with a more prepared case."[151] This ruling opened the door for a second round of trails against Zuma. More than a year later, Zuma was charged for a second time. This time he faced 16 charges in total, whilst Thint was charged with three counts of corruption. We will only focus on the racketeering issues that relate to Zuma. Our definition of racketeering was dealt with in the introduction, above.

Zuma's count 1, on racketeering, was the most serious he had to face[152] at the time. In essence, the state's arguments about racketeering, were that Shaik's Nkobi Investments did not offer anything by means of expertise or finance. Secondly, Nkobi only offered an alleged "service" through corruptly gained political connectivity to potential partners. Thirdly, the Nkobi enterprise was involved in numerous corrupt activities in order to make money. Lastly, "that Zuma was either an employee of the Enterprise or, if not seen as an employee, closely linked to the Enterprise for which he undertook a series of illegal services flowing from powers vested in his political office."[153]

Nkobi Investments was owned by Nkobi Holdings and was duly defined as an "enterprise." The definition of an enterprise included, according to the State, "any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not in a juristic person or legal entity."[154] This means that an enterprise includes people

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[148] *Ibid.*, pp.190-191.
[149] Mannak, M. 2009. "Jacob Zuma off the Hook as Prosecution Authority Drops Charges." <http://www.nowpublic.com/world/jacob-zuma>
[150] Holden, P. *op. cit.*, pp.192-212.
[151] *Ibid.*, p.214.
[152] *Ibid.*, p.217.
[153] *Ibid.*, pp.221-222.
[154] *Ibid.*, p.218.

working together in business, although not necessarily as a formalised, legal company or commercial business.

Nkobi's racketeering transgressions stem from the fact that as an enterprise, they were corrupt. There are two reasons for this: firstly, Nkobi portrayed itself as a BEE (Black Economic Empowerment) partner. It pretended to specialize in forming joint ventures with local and overseas businesses. They did so in exchange for signing lucrative contracts, but in reality could not offer anything in terms of either expertise or finance. On the surface, therefore, Nkobi seems legitimate, but in fact, it could only offer political connectivity through Schabir Shaik. Secondly, Nkobi's methods used to achieve its business objectives, were also corrupt. These corrupt methods were the following: in the first place, corrupt relationships were fostered through people in positions of political power in order to cultivate political connectivity. Secondly, payments were made in exchange for "services." Thirdly, such payments were made in a disguised manner in order to hide it form any form of scrutiny, including the office of Zuma. Furthermore, funding was secured for future political connectivity to maintain individuals in power. In addition, political connectivity was advertised as marketing benefit to create the impression of political connectivity in order to maintain symbiotic relationships. In the sixth instance, the objectives were to acquire lucrative contracts but through corrupt means. Lastly, the false impression was created that the enterprise was a legitimate business.[155]

In all of these, Zuma was a key figure. Nkobi Holdings was merely a scheme of some sorts and Zuma was *de facto* an employee of Nkobi. Zuma did, for more than 10 years from 1995-2005 receive payments in the form of a retainer in exchange for services as and when required by his paymasters. In so doing, Zuma assisted Nkobi to further its corrupt activities. The connections between Zuma and Nkobi were as follows: firstly, Zuma had a longstanding association with Schabir Shaik; secondly, Shaik was Zuma's personal advisor: thirdly, based on the benefits he received; in the fourth instance, through the service and facility benefits that Zuma received from Nkobi; fifthly, the *de facto* shareholding in Nkobi; furthermore, the political connectivity cannot be wished away; and finally, through the services Zuma performed on behalf of Nkobi.[156]

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[155] *Ibid.*, pp.219-220.
[156] *Ibid.*, pp.220-221.

Zuma's assistance to Nkobi, represented a clear pattern of racketeering. This pattern is made up as follows: advising, counselling and or assisting Shaik in the management or conduct of Nkobi's affairs; accepting benefits (each of which represents a racketeering act); by accepting annual benefits until dividends were paid out; agreeing to further the interests of Nkobi; lastly protecting Nkobi from criminal investigation and or prosecution.[157]

Zuma's trial started on 3rd August 2008 and Judge Chris Nicholson heard the arguments against Zuma's application that, should he (Zuma) be found guilty, he would appeal and also apply for permanent stay of prosecution.

Conclusion

From the early 1920's, the philosophical thinking of what would later become known as Critical Theory, recognised the importance; the reasonableness of human thinking, and the implications of their actions, in society. The problem, for Horkheimer, was that modern humankind has not been able to make effective use of the powers (e.g. technology) that they have developed and the wealth accumulated[158] over millennia. Therefore, wrote Horkheimer and Adorno, what "we had set out to do was nothing less than to explain why humanity, instead of entering a truly human state, is sinking into a new kind of barbarism"[159] and all forms of domination.[160] By 1971, Critical Theory has developed to the extent that Jürgen Habermas was in a position to state that his investigations "were to develop the idea of a theory of society conceived with political intention."[161]

It has been confirmed by history that strict adherence to rationalization at all costs has compromised the principles of freedom. Again, according to Horkheimer, the average everyday man-in-the-street, would argue that reasonable things are those that are considered to be of use to mankind. Individuals decide for themselves what is reasonable. Naturally, such considerations do not take place in a vacuum. The circumstances surrounding the considerations, changed over time, as do societal laws,

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[157] *Ibid.,* p.221.
[158] Horkheimer, M. *Critical Theory: Selected Essays,* p.4.
[159] Horkheimer, M and T. W. Adorno. *Dialectic of Enlightenment. Philosophical Fragments,* p.(xiv).
[160] Horkheimer, M. *Eclipse of Reason,* pp.63-86.
[161] Habermas, J. *Theory and Practice,* p.1.

customs and traditions.[162] Reason cannot become transparent as long as humans act as members of an organism which lacks reason.[163] Multi-disciplinary research into socio-economic human life relies on both fact and theory as rational constructs, employed to reach an understanding of what is important and reasonable. Accordingly, one cannot find sufficient reason and support in the public domain for the Arms Deal. The Deal took place *after* the Cold War, at a scale not required, and at a time when social infrastructural investment realities necessitated urgent attention in the South African society – even the items bought, were not required. The Deal took place at a point in time when there was ambiguity about the volatility in the new democracy.

Whilst traditional inquiry focused on the underlying conditions of the possibility for knowledge production, recent theory links itself to the logical analysis of scientific propositions or statements. Applied to the Arms Deal, this means that we have been unable to truthfully decide on what is important for the South African society, specifically when evaluated against the pressing utilitarian social needs alluded to, above. A new synthesis was required. Instead, reason gave way to political rhetoric which still serves as a front for subsequent racketeering activities. Horkheimer was of the view that the fruitfulness of something does not only depend purely on logical or methodological considerations but rather need be understood in the context of the real social processes – meaning, real problems in everyday life.[164] What is needed, he wrote, was a conception which overcomes the one-sidedness that necessarily arises when limited intellectual processes are detached from the total activity of society.[165] Horkheimer called for a healthy human understanding and common sense – one that supersedes the narrow individual purposefulness. He said that there is no such thing as supra-individual activity.[166] This means the eradication of all forms of domination and the need for transparency in society. Vico called for "prudence in practical matters and for their sublime wisdom in intellectual matters."[167] These principles were clearly ignored by the racketeering participants before and during the Deal. The participants in the Arms Deal racketeering did so according to their active and conscious co-

[162] Horkheimer, M. *Eclipse of Reason,* p.3.
[163] Horkheimer, M. *Critical Theory: Selected Essays,* p.208.
[164] *Ibid.,* p.195.
[165] *Ibid.,* p.199.
[166] *Ibid.,* pp.202, 203, 210.
[167] Vico, G. *New Science. Principles of the New Science Concerning the Common Nature of Nations.* p.407.

participation in the decision-making process. Their partaking and incorporation into governing, raises fresh questions of how loyalty to Government and their service to the citizenry should be re-defined.

Modern Critical Theory puts empirical social research regarding social science paradigms, at the centre of its intellectual efforts. At the same time, it questions the distinct logic of the social sciences being different from the logic of other sciences. The protagonists argue that social sciences are, in principle, nomological sciences that proceed hypothetico-deductively like e.g. physics. On the other hand, theoreticians of hermeneutically reflective and humanistic sociology, disagree. From Horkheimer to Habermas, the unity of Critical Theory consists of the critique of empiricism. It was especially Habermas who distinguished between an actions-theoretical paradigm and a systems-theoretical paradigm to extend Critical Theory's critique of functionalist reason.[168] The Arms Deal does not stand separate from theoretical thinking in society, empirical social research, or the logic of other sciences.

Horkheimer's view (in the late 1960s), that his early philosophical efforts required careful review, because at the time, they were influenced by different economic and political circumstances,[169] are relevant for our investigation surrounding the Arms Deal. Post-1994 history and political culture in South Africa has changed significantly. One change was towards fraud, corruption and racketeering. For Horkheimer, corruption was not an accident, but a "symptom of the way society was going"[170] - a view closely related to Schopenhauer's questioning of the moral significance of life and the world."[171] Nelson Mandela's view here remains relevant.

In relation to the Arms Deal, some contend that Mbeki did the young South African democracy a disservice[172] even long before Zuma came to power. This disservice is not incongruent with the view that there are many reasons why Modise was a passionate advocate for the upgrading of the Defense Force: "[p]erhaps too," as Feinstein suggests, "it was his determination to cream some fat off the top of the deal in his twilight years of public service."[173] Both hypotheses need to be applied in the wider context of the Deal, since the principles of Horkheimer and Schopenhauer

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[168] Brunkhorst, H. "Critical Theory and Empirical Research", in Rasmussen, D. M. (ed.) *The Handbook of Critical Theory*, pp.78-79.
[169] Horkheimer, M. *Critical Theory: Selected Essays,* p.(v).
[170] *Ibid.*, p.(vii).
[171] Schopenhauer, A. *op. cit.*, p.1.
[172] Gevisser, M. *Thabo Mbeki. The Dream Deferred,* p.689.
[173] *Ibid.*, p.684.

above, were swept aside by pure greed and self-interest at the expense of its constituency, by the participative political super-elite. From the beginning of the Arms Deal, and in numerous instances, we saw that the legal system played a central role in politics.[174] Conversely, there can be no doubt about the political motives for various interferences[175] that can at the same time not be separated from corrupt financial gain.

The problem with this view is simply the relativism of the main concepts of the above paragraph. In an environment conducive to corruption and racketeering (the non-vacuum), the freedom to decide for themselves (the perpetrators of fraud and racketeering), seemed reasonable only to themselves in order to enhance what they regarded as important – being their own interests at the expense of their fellow citizens. Racketeering was perpetrated by individuals who previously fought for the ideals of the too often quoted cliché "for all South Africans." The truth is that their "reasonableness of what is of use," was exclusivist by nature and clearly had selfish political intent. This means that Gaskell was wrong when he wrote that "[m]an is nevertheless a rational creature and the more he governs himself by the dictates of reason, the more he undoubtedly approaches moral perfection."[176] This was decidedly not the case in the Arms Deal racket. In fact, the prevailing rational processes surrounding the Deal resulted in contra-moral, -ethical, morale, and productivity outcomes[177] as perpetrated by those involved. A new set of moral and ethical imperfections were therefore arrived at. In our introduction, we referred to the rise of a new order.

Incomplete as the original fundamentals of racket theory's economic and political bases might have been, they nevertheless formed the background against with scientific, moral, cultural and psychological characteristics of the self-destruction of modern-day enlightenment were interpreted. They were formulated in an era of domination, and hence the concepts power and power relations, are always dominant

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[174] Andy. "Zuma's Corruption Charges to Impact South Africa". <http://www.globalpost.com/notebook/south-af>

[175] Smook, E. 2008. "Zuma Warns Concourt About Mbeki Ruling", in *The Star*, 3 October 2008. <http://www.armsdeal-vpo.co.za/articles11/warn>

[176] Gaskell, P. *The Manufacturing Population of England: Its Moral, Social, and Physical Conditions, and the Changes Which Have Arisen From the Use of Steam Machinery; With an Examination of Infant Labour*, p.30.

[177] Johnson, H. M. *Sociology: A Systematic Introduction*, pp.304-309.

in the law of the racket.[178] Horkheimer's "primacy of politics" is in essence the "primacy of domestic politics." A racket, as is with the concept class, represents a relationship[179] of a particular type and thus exercises a cultural and economic function.[180] This is according to the so-called objective theory of reason.

For Horkheimer for instance "[r]eason was supposed to regulate our preferences and our relations with other human beings and with nature,"[181] but in terms of the Arms Deal, "reason has displayed a tendency to dissolve its own objective content."[182] So, "[r]eason as an organ for perceiving the true nature of reality and determining the guiding principles of our lives has come to be regarded as obsolete."[183] This is indicative when we consider that "self-interest gradually gained the upper hand and finally suppressed the other motives considered fundamental to the functioning of society."[184] In our view, this is tantamount to an "eclipse of reason" that prevailed relative to the Deal.

Rackets function in an environment where "all historical struggle is nothing other than a vain effort to displace a founding limit that is structural in status."[185] This involved the possibility of new articulations of socio-political formations. Such viewed emancipation as the lack of the fundamental dissolution of society.[186] Landsberg's view is that South Africa was by 2010, a more active player in the regional arena[187] than previously. According to him such political behaviour was a convenient smokescreen/scam for Ronnie Kasrils who have lobbied in favour of the Arms Deal. The scale and depth[188] of the Arms Deal under the Mbeki administration compromised Mandela's "ethical diplomacy."[189] It also compromised Mbeki's vision of the African Renaissance.[190] In "the murky area of arms sales" the Arms Deal

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[178] Noerr, G. S. *op. cit.,* p. 237
[179] Thopmson, E. P. *The Making of the English Working Class,* p.11.
[180] *Ibid.,* p.15.
[181] Horkheimer, M. *Eclipse of Reason,* p.7.
[182] *Ibid.,* p.9.
[183] *Ibid.,* p.13.
[184] *Ibid.,* p.14.
[185] Butler, J. "Restaging the Universal: Hegemony and the Limits of Formalism", in Butler, J., E. Laclau and S. Žižek. *Contingency, Hegemony, Universality. Contemporary Dialogues on the Left,* p.13.
[186] Laclau, E. "Identity and Hegemony: The Role of Universality in the Constitution of Political Logics", in Butler, J., E. Laclau and S. Žižek. *op. cit.,* p.45.
[187] Landsberg, C. *The Diplomacy of Transformation. South African Foreign Policy and Statecraft,* pp.4, 18.
[188] *Ibid.,* p.8.
[189] *Ibid.,* p.5.
[190] Meredith, M. *The State of Africa. A History of Fifty Years of Independence,* p.676.

highlighted "a tension between ethical and human rights considerations on the one hand and national interest and financial motives on the other."[191] In line with Landsberg's view, neither ethical and human rights, nor national interests or financial considerations, were upheld. Further explanations of the lack of ethical behaviour need not be stressed: suffice to state that human rights considerations were brushed aside and covered up by alleged offset gains that hardly materialized; arguments about national interest do not stand up as the equipment bought were not suitable for our conditions nor did they make financial sense. Consequently, there is no "tension" between these disciplines – they simply did not exist or were blatantly ignored. For Andrew Feinstein, for example, "[t]he Arms Deal and its cover-up were the moment at which *the ANC and the South African government lost their moral compass,* when the country's political leadership was prepared to undermine the institutions of our democracy […] to protect themselves and the party."[192] It is probably the largest racket that the African continent has ever experienced.

The fraudulent practices of the Arms Deal confirm "the status of the political domain"[193] over society. The influence thereof has extended into the highest echelons of South African government. But long before this, Marx said that the "executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie."[194] In our case, his view is applicable to the racketeering Arms Deal since it involved members of our government's executive who did so for contra-constitutional interests. Today, one can justifiably ask revisionist historians e.g. Marks and Atmore, the very same question they posed in 1980 when they asked: "how has it come about that so small a number of blacks have been able to impose itself on a greater number of South African to achieve its position of dominance, exploitation and power."[195] The same question can now be asked to the ANC and Government Executive's respectively in their new-fund positions of dominance, exploitation and power – at least pertaining to the Arms Deal. Marxist philosophy typically seeks answers to human ills in the material conditions of society. It is questionable if such can persist as an acceptable explanatory model. Yet, Marks and Rathbone made a valid observation when they wrote that "we know remarkably little of what these

[191] Landsberg, C. *op cit.,* pp.111-112.
[192] Holden, P. *op. cit.,* p.(vii). Italics added.
[193] Butler, J. "Dynamic Conclusions", in Butler, J., E. Laclau and S. Žižek. *op. cit.,* p.262.
[194] Marx, K. and F. Engels. *op. cit.,* p.221.
[195] Marks, S. and A. Atmore. "Introduction", in Marks, S. and A. Atmore. (eds.) *Economy and Society in Pre-industrial South Africa,* p.2.

dramatic events meant for black South African, whether in terms of the changes wrought in their material conditions, or how these changes were shaped by, and in turn reshaped, their culture and consciousness."[196] Of course the context of their (Marks and Rathbone's) views at the time was different, as were their reasons, relative to our position today pertaining to racketeering. The validity of their question remains. It is true that we know remarkably little of these dramatic events of the Arms Deal; the material conditions thereof, and how these changes were shaped by and in turn reshaped culture and consciousness. These issues require substantial re-research efforts. Resent research by Mattes, for instance, points to what he called the "mismatch between the operating norms of the regime and its constituent institutions."[197] Despite the commonly accepted claims that the South African 1996 Constitution enshrined new freedoms, rights and greater opportunities for political participation, Mattes's views clearly also indicate that this mismatch hinges on "the intrinsic value of democracy."[198] In the case of the Arms Deal, it meant different things to different people. It seems productive to look for answers at a different level – one that supersedes, but not exclude, the entirely rational.

The global problems facing modern mankind require us to seek wisdom and no longer mere knowledge - of which it seems we have enough. This represents "a radical change in the fundamental, overall intellectual aims and methods of inquiry"[199] and the practice of political ethics. Such would give "intellectual priority to the personal and social problems we encounter in our lives as we strive to realize what is desirable and of value."[200] This new kind of inquiry is directed at a rationality "devoted to the growth of wisdom."[201] The need therefore is no longer a sufficient condition, but rather a necessary one.[202] It remains to be seen how long those who view South Africa as "the darling of the world"[203] will continue to do so once history has cast its verdict over those very recipients of foreign aid, were involved in the

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[196] Marks, S. and R. Rathbone. "Introduction", in Marks, S. and R. Rathbone. (eds.) *Industrialisation and Social Change in South Africa*, p.1.
[197] Mattes, R. "The 'Born Frees': The Prospects for Generational Change in Post-Apartheid South Africa" in *Australian Journal of Political Science*, Vol.47, No.1, 2012, p.133.
[198] *Ibid.*, p.135.
[199] Maxwell, N. *From Knowledge to Wisdom. A Revolution in the Aims and Methods of Science*, p.(v).
[200] *Ibid.*
[201] *Ibid.*, p.(vi).
[202] *Ibid.*, p.3.
[203] Stolten, H. E. "Global support for South Africa During and After Apartheid: How a History of Nordic Solidarity was Created and Used by Social Movements and Governments." Paper prepared for the conference *Africa in World Politics.* University of Texas at Austin, 25-27th March 2011.

Arms Deal rackets. In a sense, Stolten is correct when he wrote that "[t]he fundamental disagreements between historians will reverberate throughout the academic universe when the social realities recall them."[204] Furthermore, if Stolten is on firm ground about the serious decline of the study of history in South Africa,[205] then it is also time to agree and move forward that it is no longer appropriate to attribute Africa's woes entirely in terms of previously held traditional interpretations of the legacy of colonialism[206] and or apartheid.[207] For our purposes, the unethical political behaviour of the racketeering political elite in South Africa faces the same interrogation by *all* historians. In our view, Mattes's central question "whether the value structures that questioned and de-legitimated the former authoritarian and totalitarian regimes are sufficient to legitimate and consolidate new democracies,"[208] provides a possible answer to Stolten. The reality is that one can hardly say that Zuma's political sociology and training comes from an environment that would be conducive for sustainable democratic governance. Participation in the illegal economy not only challenges a government's authority and power, but also its legitimacy.[209] This resonates well with the views of Pareto in that the elite ruling group be defined in terms of superior qualities of the individuals.

The prelude to Zuma's ethical dilemma goes back (as we have dealt with above) to Mbeki's desire for central control.[210] Mbeki had come to the belief that Zuma did not have what it took to hold high office.[211] For Althusser, "corruption constitutes a sort of experimental situation which makes it possible to penetrate the indivisible nature-principle unity."[212] The most corrupt individual's general will, cannot be destroyed –

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[204] Stolten, H. E. "The Discussion About South Africa: The Research Debate on Apartheid Between Until 1994." Paper delivered at the 9th Conference of Africanists in Moscow, 21-23 May 2002.

[205] Stolten, H. E. "Historians in the New South Africa: Exposing Conflicts or Promoting Reconciliation." Paper presented at the conference at SOAS/Institute of Commonwealth Studies. *Looking at South Africa 10 years on.* University of London, 10-12 September 2004. <http://www.sas.ac.uk/commonwealthstudies/resource/stoltens.pdf. 2004.

[206] Stolten, H. E. "Divergent Views on African Colonial History." Contribution for Den Kgl. Veterinœr-og LandbohØjskole, Center for Tropisk Landbrug. (The Royal Veterinary and Agricultural University), 1997. For issues about colonization, see Engelbrecht, C. "Marx's Theory of Colonialism and Contemporary Eastern Cape (South Africa) Historiography." <independent.academia.edu/christoengelbrecht/papers> 2012, pp.1-16.

[207] Gevisser, M. *op. cit.*, pp.(xxx, xli).

[208] Mattes, R., *op. cit.*, p.133.

[209] Karras, A. L. "Smuggeling: Contraband and Corruption in World History." <www.adademia.edu/367829/Alan_h._Karras._Smuggeling_Contraband_ and_Corruption_in_World_History> n.d.

[210] Gevisser, M. *op. cit.*, p.(xxxv).

[211] *Ibid.*, p.(xxvii).

[212] Althusser, L. *Politics and History*, p.52.

only eluded.[213] The political experiences[214] and education of Zuma that stems from a militant revolutionary situation, seems to confirm the disjuncture between economic and political crises.[215] On the one hand Zuma is expected to govern in the most of liberal constitutional circumstances, but on the other, he is part of no more than an era of neo-domination – domination simply by different leaders and resources available to them. The issue goes much deeper than personal corruption or racketeering.

Since Nelson Mandela came to power, older white South Africans realized that the opening of South Africa would lead to new foreign investments, whilst a new aspiring layer of blacks saw this as an opportunity to enrich themselves.[216] This supports the view that the privileged positioning of the main players in the Arms Deal represents a reality of cultural exchange – a cultural exchange of racketeering between political elite and business associates. According to Lenin, this characterizes the principle of the class character of racketeering. It is therefore not surprising that the seamless relationships between business and politics gave rise to the position that out of super-profits followed bribery.[217] This symbiotic relationship between governing and business undermines Montesquie's ideal of the good governments that rigorously distinguish between the separation of powers of the legislature, executive and judiciary and how the independence of each guarantees moderation, security and liberty. The truth is that such ideals have become a mere myth since the encroachment of the executive on the legislature has become a *political* reality. The famous separation of powers has simply become a division of power in favour of the power elite. It has become a phenomenon of excluded combination.[218] On the one hand Booysen's concept of "dual repertoires" show that such continue to enhance loyalty to the ANC[219] despite flourishing racketeering practices. On the other hand is the principle that "man gets himself appointed and selected who is ablest."[220] On both counts, Government's legitimacy is compromised.[221] This is certainly consistent with what Antonio Gramsci described as reciprocal relations of having an associate in his

[213] *Ibid.,* p.151.
[214] Sassoon, A. S. *Gramsci's Politics,* p.109.
[215] *Ibid.,* p.110.
[216] Slaughter, B. "Arms Corruption Scandal Erupts in South Africa." < http://www.wsws.org/articles/2001/mar2001/>
[217] Lenin, V. I. *op. cit.,* pp.4, 9.
[218] Althusser, L. *op. cit.,* pp.87, 90-92.
[219] Booysen, S. "Beyond the Ballot and the Brick: Continuous Duel Repertoires in the Politics of Attaining Service Delivery in South Africa?", in Mc Lennan, A. and B. Munslow. *op.cit.,* p.104.
[220] Carlyle, T. *Past and Present,* p.32.
[221] Mc Lennan, A. "The Delivery Paradox", in Mc Lennan, A. and B. Munslow. *op cit.,* p.22.

pocket.[222] Relationships and behaviors of this kind undermine the principles of democracy. In fact, they highlight the lack of dignity against the dominant ideologies[223] and are tantamount to ideological intolerance. Thus, one needs to consider the role of elite hegemony within political theory.

So how has it become possible, in what is often hailed as the "new" South Africa, that Zuma and others failed on their personal service delivery to the country, although constitutionally sworn to uphold? For Mc Lennan "[s]ervices delivery is commonly understood to mean the provision of goods or services, by government or other organisations, to those who need or demand them."[224] Gramsci's writings are helpful. Boggs wrote: "as all ruling class elites seek to perpetuate their power, wealth, and status, they necessarily attempt to popularize their own philosophy, culture, morality, etc. and render them unchallengeable, part of the natural order of things."[225] Since too many are easily corrupted, it gives rise to the "appearance of political thugs"[226] by those who control utter cohesive power.[227] When this happens, all liberal ideology, as enshrined in our constitution, is compromised by the privileged political elite who are supposed to govern the separation of governmental powers. Its own hegemony, and civil society, are handcuffed. In time, ethico-political history will reveal the inabilities to realize the reality of a particular time of hegemony that regarded moral and governance leadership as unimportant.[228] Thomson's view of "another irresponsible, corrupt administration so sadly typical of Africa,"[229] seems to be an appropriate description. In the same vain, Legassick was correct when he said that dissatisfaction about service delivery is not only confined to the overcoming of the legacy of apartheid.[230] He referred to a nationwide poll of December 2006 that revealed that almost 60% of the respondents believed Zuma had disgraced the country.[231] From the position of the workers, looking up to their once struggle leaders, their current situation has become abstract and illusionary. Racketeering represents an ideological

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[222] Gramsci, A. *Prison Notebooks.* p.137.
[223] *Ibid.,* p.153.
[224] Mc Lennan, A. "The Delivery Paradox", in Mc Lennan, A. and B. Munslow. *op cit.,* p.21.
[225] Boggs, C. *Gramsci's Marxism,* p.39.
[226] Gramsci, A. *Selections From the* Prison Notebooks *of Antonio Gramsci,* p.95.
[227] Gramsci, A. *Prison Notebooks.* Volume 2, p.32.
[228] Forgacs, D. *A Gramsci Reader. Selected Writings 1916-1935,* p.194.
[229] Thomson, L. *op., cit.,* p.523.
[230] Legassick, M. *op. cit.,* p.503.
[231] *Ibid.,* p.536.

hegemony that is insensitive to mass consciousness of a society that seeks equal access to resources for "all South Africans."

In 2008, Holden wrote that "there still exist a number of potentially damning allegations and questions that hover and buzz over the corpse of the Arms Deal."[232] He referred to due legal processes regarding the Deal that were not completed. On Thursday 15 September 2011, President Zuma announced in parliament that an investigation into the Arms Deal will be re-opened. So, yet another commission of inquiry will be appointed and again, as was the case from the beginning, political interference into this new process is also suspected – again highlighting the principle of the primary of politics and the questions of the division of powers relating to the actual composition of the commission. *Sunday Times* reported that Zuma wants former Chief Justice Sandile Ngcobo to head the commission of inquiry.[233] Political analyst, Aubrey Matashiqi, said this "was a strategy also aimed at pre-empting his political rivals from using the arms deal to question his leadership ahead of the ANC's national conference next year."[234] Richard Young said "[t]he President's advisors must have told him he has little chance of beating the Constitutional court application and has been left with little option but to appoint the commission."[235] On 25 April 2013, Parliament passed the Bill on State Security making it almost impossible to render public debate on "issues of state security." It is widely discussed that further prosecution regarding the Arms Deal is curtailed if not suspended. To substantiate this point we refer to SAPA's in March 2013 on a case before the court where the plaintiff alleges that racketeering laws are open to personal and political manipulation.[236] This research has shown this to be correct.

At this point, there can be no easy or universally agreed to explanation[237] for the racketeering practices during (and after) the Arms Deal. Hopefully Zuma's trail will reveal the necessary and needed facts. In a new state with its own new consciousness about self-rule, one inevitably finds pronounced sensitivities regarding corruption and new forms of access to powers that can facilitate, and partake, in corruption.

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[232] Holden, P. *op. cit.,* p.231.
[233] Ngalwa S. and M. Malefane. "Ngcobo in the hot seat", in *Sunday Times,* 18 September 2011, p.4.
[234] Mooki, O. and M. Merten. "Opening a Can of Worms. Zuma's Arms Deal Shock Beats Highest Court to the Punch", in *The Star,* 16 September 2011, p.1.
[235] Kirk, P. 2011. "Zuma's Arms Deal Decision Lauded", in *The Citizen,* 16 September 2011, p.3.
[236] SAPA. "Businessman Savoi to Challenge Racketeering Laws" in <www.timeslive.co.za/local/2013/03/04/businessman-savoi-to-challange-racketeering-laws>
[237] Van Onselen, G. *op. cit.*

However, angst to mitigate corruption is the dialectic of the role of the government servant. Should such be out of tune, then questions about the ability of new democracies to bring about meaningful changes arise. For instance, the seamless relationship between legal systems and other specialisms of governing, results the disillusionment with democracy and its non-rule of law. In this regard, Gevisser wrote: "Mbeki allegedly worried that Zuma and his backers had no respect for the rule of law, and would be unaccountable to the constitutional dispensation the ANC had put into place…"[238]

Van Onselen, however, attempted a plausible explanation.[239] According to him, power is entrenched in culture. In this instance, Zuma is at the highpoint of both the cultural and political pecking order. On the one hand he symbolizes the main beliefs and values principles as defined by the constitution, but on the other, he basically wears the veil and clout of a king. The mass of his supporters identify with the "kinglikeness" and not with a constitutional head. In African culture, patriarchy is a dominant force, and to his supporters, Zuma is just that. In such position, he enjoys a special kind of political invulnerability where transparency does not feature as much as being a good chief, does. Since patronage is due to the good chief, and when business invests in the ANC, it makes for good business.[240] Critical Theory questions the failures of both democracy and the material base of society.

Finally, broad-based preoccupation with corruption (including racketeering) mirror shifting common notions of the state apparatus. On the one hand is the desire for a rule-bound "clean" administration as opposed to the actual functionality of the state. If there is a seemingly unstoppable discord between expectations and reality, then the electorate does not need such state and its management any more. Research has shown that many politicians are the source of corruption with active involvement is racketeering through its political dispositions. Under these conditions, the confines between the "state" and society" are so indistinct that a new class of privileged political and bureaucratic elite is on the rise. It has its own set of special skills and knowledge necessary to manage the new-found "democratisation" of corruption.[241] If not, we argue, the phenomenon of a so-called meta-state is developing alongside existing governing institutions in a "democracy" that does not function along modern

[238] Gevisser, M. *op. cit.,* p.(xli).
[239] Van Onselen, G. *op. cit.*
[240] *Ibid.*
[241] Witsoe, J. *op.cit.,* p.52.

liberal constitutional criteria *inter alia* characterized by the accommodation of racketeering on an ever-increasing scale.

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